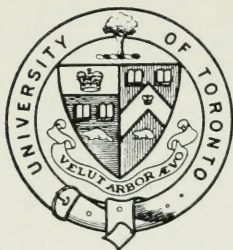




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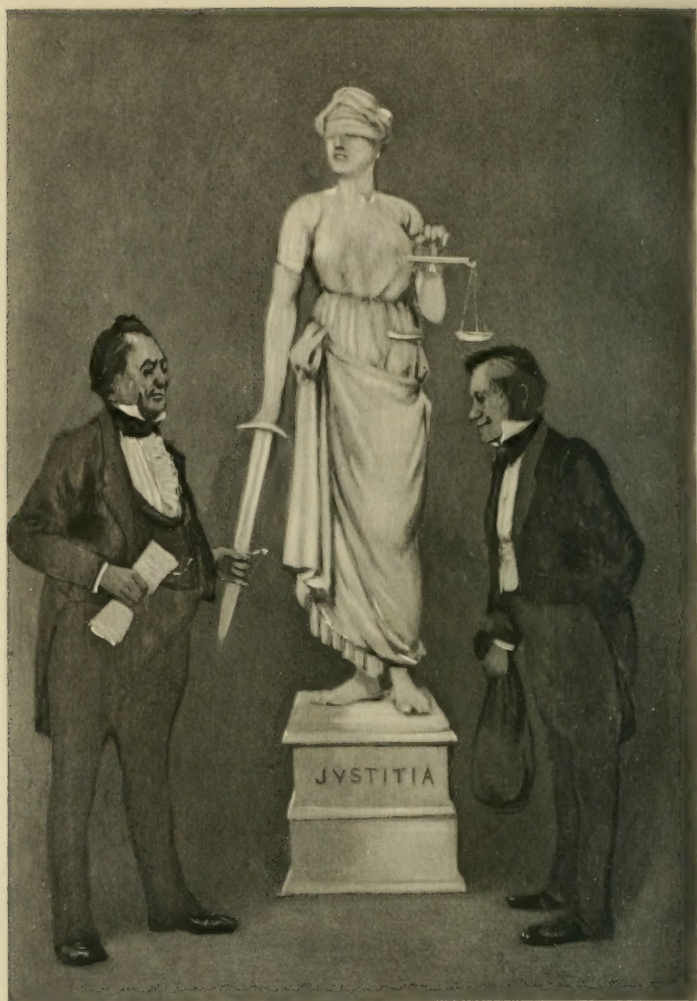




LEAVES OF THE LOWER  
BRANCH







*Messieurs Dodson and Fogg.*  
*(from a painting)*



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# LEAVES OF THE LOWER BRANCH

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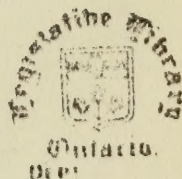
The Attorney in Life and Letters

BY

E. B. V. CHRISTIAN, LL.B.

AUTHOR OF "A SHORT HISTORY OF SOLICITORS"

WITH ILLUSTRATIONS

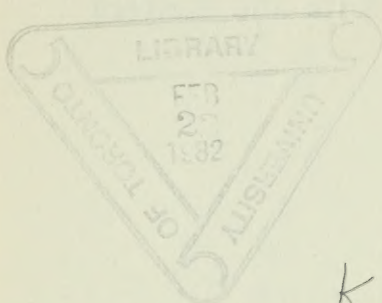


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TO  
*MY WIFE*







## PREFACE

THE "lower branch" is sometimes called, with delicate consideration, the "other branch"; for the legal tree has but two limbs. By either name it is indicated with sufficient clearness that the solicitors are not at the top of the tree. The generous sunshine falls on the upper branch. The lower (though not, as often suggested, shady) is in the shade, and this is the branch which was the haunt and home of the attorney.

Attorneys-at-law are defined in an old Law Dictionary as "such persons as take upon them the business of other men by whom they are retained. Attorneys," continues the author immediately, "may be punished in a summary way." That is ever the world's first thought. Yet in the legal scheme of things the attorney was once a person of importance. He was an officer of the court, even if, unhappily, one to whose office no salary was attached. "The court must have ministers," said one of His Majesty's judges in 1766; "the attorneys are its ministers." But the attorney is dead. He "ceased upon the midnight" of the 31st October 1875, though doubtless all in him that was good and beautiful lives on in the solicitor. "A

crocodile," said Mr. Mortimer Collins, "is not improved by calling him an alligator. Still," he added, "the attorney is gone. He used to like to call himself a solicitor—now he can do it with a clear conscience, if he has such a thing." Archbishop Trench in 1859 had observed that the word "attorney" was going out of honour—and, indeed, the preference for "solicitor" was of much earlier date—though he cited ancient instances of its use in associations not only dignified but lofty. Mr. Samuel Warren declared "the good old Saxon" term to be an honourable, a right honourable, old English word. But even thus supported by pillars of the Church and State, the word fell into disfavour, and was supposed to have an ill significance; and, doubtless, it was with the approval of the profession that the alteration in the attorney's style and title was made.

A similar change had been effected in Edinburgh in 1784, when, as recorded by James Boswell, Esquire, the procurators, or attorneys, of the inferior courts of that city obtained a charter in which, as he said, they had taken care to have the ancient designation of *Procurators* changed into that of *Solicitors*, from a notion, as they supposed, that it was more genteel. A "dull and foolish" newspaper paragraph led to proceedings for libel, which failed. The complainants appealed, and Dr. Johnson assisted Boswell to answer their petition. The great moralist disposed with some roughness of the new solicitors' pretensions. "They have never gained," he said, "half-a-crown less in the

whole profession since the mischievous paragraph has appeared; and as to their reputation, what is their reputation but an instrument of getting money? . . . Their irritability arose only from an opinion of their own importance, and their delight in their new exaltation. What might have been borne by a *Procurator* could not be borne by a *Solicitor*. . . . Titles and dignities play strangely on the fancy. As a madman is apt to think himself suddenly great, so he that grows suddenly great is apt to borrow a little from the madman. To co-operate with their resentment would be to promote their phrenzy; nor is it possible to guess to what they might proceed, if to the new title of Solicitor should be added the elation of victory and triumph."

In such harsh fashion has the world judged its advisers. Such is the uncharitable judgment which has become universal. It has taken possession of the minds even of the young, if we may judge by the late Miss Yonge's *Talks about the Laws we Live Under*—

*Herbert.* But what's the use of lawyers?

*Albert.* To get rogues off their punishment.

*George.* I thought it was to breed quarrels and get their profit out of it.

*John.* Oh! that's the lawyers who don't have wigs who do that, the attorneys.

True, one learns from the same source that a solicitor is "a good sort of attorney." But in England, at least, the new title occasioned no excessive elation, no violent frenzy; yet the change decreed by Parliament, if not acclaimed, was generally accepted. The

word "attorney" lingers only as a term of abuse. So used it was often in the mouth of another mordant talker, Mr. Commissioner Kerr, who was determined to make men realise that "old Father Antic" was no unfit name for the law. "Gentlemen of the jury," he would say, "I don't know why ye're brought here in a simple case of this kind. But, gentlemen, I'll tell ye why ye're brought here. The attarrunney gets a fee of three and fourpence for summoning ye here, and as long as the attarrunney gets a fee of three and fourpence for bringing ye here, ye'll be brought here unnecessarily." Ere the censured solicitor had tied up his papers and left the court, the judge (sitting alone) had disposed of the next "simple case of this kind," dismissing the parties with the remark that if they wanted that sort of question decided they must have a jury; and, without a hearing, judgment was given for one side with an order that there should be a new trial—and before a jury—at the request of the other. If, endeavouring to profit by the judge's remark, the solicitor claimed the three and fourpence in his bill, he found the charge disallowed by the Registrar, who explained gently that no such fee was, or ever had been, allowed, but that on this point His Honour laboured under a misapprehension which it had been found impossible to remove.

Such misapprehensions beset even those most anxious to do justice to their fellow-men, especially those whose sails fill readily with the breath of



popular applause. How else can one account for the denunciations of attorneydom, general in all times, and not only here but in other countries, with different systems of law? Perhaps it is the "costs, charges, and expenses" which occasion the dislike. The client cries with Dryden—

"Oh curst effects of necessary law!"

Whatever the cause, the ingenious Mr. Tom Brown (one may be allowed the mild revenge of coupling his name with Dr. Johnson's) summarised the popular view. "'Tis written *Attornatum si dixeris omnia dixeris*: which is as much as to say that if you call a man an Attorney you call him all the Rogues and Rascals in the World."

The world's censures, of course, are not to be taken too seriously. The lawyer may naturally and properly be anxious that his profession should not only be honourable in itself but also be honourably regarded. But he should remember that the attacks made upon it are often sub-humorous, facetious in intention, and expressed with conscious exaggeration. "No case: abuse the plaintiff's attorney," has become a familiar maxim in the tactics of controversy. Well or ill deserved, the censures are here collected, raw materials for a History of Opinion concerning the Legal Profession. Some attempt is here made to show what manner of men the practitioners seemed to the world during the six hundred years they moved upon its stage, to record the careers of some notable members

of the profession, and to offer a modest Apology for the Attorneys.

Since the considerations upon the case of Messrs. Dodson and Fogg were published in the *Cornhill Magazine* (from which they are reproduced by permission) Sir Frank Lockwood's lecture on *The Law and Lawyers of Pickwick* has appeared, and Mr. Percy Fitzgerald's annotated edition of the trial of *Bardell v. Pickwick*. The author has quoted, with due acknowledgment, from these sources observations which seem to corroborate the view he has expressed. He has also to acknowledge the courtesy of the editor of the *Law Magazine and Review* in allowing the article "The Attorney in the Poets" to be reprinted from its pages; and to thank the Library Committee of the Law Society for permission to reproduce, from copies in its possession, the title-page of *The Conveyancer's Light* and the frontispiece of *The Burning Shame*.

E. B. V. C.

April, 1909.

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# LEAVES OF THE LOWER BRANCH

## IN THE MATTER OF DODSON AND FOGG, GENTLEMEN

THE lamentable fate of Messrs. Dodson and Fogg is typical of what has befallen their profession. When Dr. Johnson said that he would be loth to speak ill of any person whom he did not know to deserve it, but he was afraid the person was an attorney, he was jesting, with an eye to the gallery; when, in more serious mood, he made his will, an attorney was one of the gentlemen whom he appointed executors. The world has remembered only the jeer. The death-bed confidence has had no more weight than had the death-bed request to Lord Eldon to attend church on Sundays. This is no solitary instance. What doctors were to Molière, what mothers-in-law are to the singers of the music-hall, that practitioners of the law are to the world at large. The faults of its social economy are on our heads; the sins of the legislative fathers are visited upon the administrative children. This we no longer resent; calumny of our class we have learned to bear with the same equanimity with which our assailants join in the General Confession. But it is intolerable that the general antipathy should

be allowed, in particular applications, to injure the living or revile the memory of the dead. For seventy years some odious charges made against Messrs. Dodson and Fogg, attorneys, who formerly carried on a lucrative practice in Freeman's Court, Cornhill, have remained unanswered. An unthinking assent has been given to these allegations, till the names of two honourable gentlemen have become a synonym for chicanery and pettifogging malpractices, and they themselves have been classed with Oily Gammon and the other grotesque and detestable creatures of fiction. It is proposed to examine the facts on which, it is said, these grave accusations are founded.

The principal charges against Messrs. Dodson and Fogg are that they instigated and conducted to an unjust issue an action, brought in the Court of Common Pleas, for breach of promise of marriage; that by distortion of the evidence they procured a serious miscarriage of justice; and that, having undertaken the plaintiff's case "on speculation," and made an agreement not to charge her for their services unless successful, they were guilty of unprofessional conduct akin to the offences of maintenance and common barratry. If it can be shown that the verdict was supported by adequate and untainted testimony, the main charges against Messrs. Dodson and Fogg fall to the ground.

It is necessary, therefore, to examine carefully the evidence adduced at the trial of the cause of *Bardell v. Pickwick*. But, by a singular mischance, the only record which now exists is contained in certain memoirs, compiled partly by friends of the defendant, but principally by the defendant himself.<sup>1</sup> That these

<sup>1</sup> See *The Posthumous Papers of the Pickwick Club*, vol. i. p. 185, and elsewhere. The references, here and throughout, are to the Jubilee Edition: Macmillan & Co., 1886.

papers should be inspired by bitter and implacable hatred is a matter of course. There is no malice like the malice of a defeated litigant. The bitterness of love turned to hate, the fury of a woman scorned—these are feeble and transient emotions compared with the rage of an unsuccessful suitor. The field being lost, for him all is lost. His unconquerable hate is impotent; the study of revenge serves but to increase his sense of injury. It was with such feelings that most of the *Pickwick Papers* were written. But Mr. Pickwick was fortunate beyond his deserts. His papers were edited by the late Mr. Dickens, a gentleman of humour and observation, whose name ensured for them a wide circulation, and who succeeded in restraining to some extent the misrepresentations of his author. Mr. Dickens perceived that the hero as litigant was a new and inauspicious portent; but his task, one suspects, must have been even more arduous than that which he afterwards undertook in curtailing the amorous garrulities of Grimaldi. Even with his revision, the *Pickwick Papers* contain some obvious inaccuracies and travesties of fact. But, accepting the report as it stands, we propose to justify Messrs. Dodson and Fogg out of their assailant's mouth.

It is worth while, however, to cite one or two instances of the inaccuracy which pervades the *Pickwick Papers*. In so simple a matter as transcribing the courteous letter sent him by Messrs. Dodson and Fogg before commencing the action, Mr. Pickwick makes a mistake of three years in the date. The Revolution of July was described three years before it took place. Mr. Pott in 1827 called for the file of his newspaper for 1828.<sup>1</sup> Mr. Fogg is described as "an elderly,

<sup>1</sup> i. 339. The errors were pointed out by Mr. Charles Dickens the Younger.

pimple-faced, *vegetable-diet* sort of man";<sup>1</sup> and, without being a vegetarian, one may see that this account of his personal appearance is founded on prejudice rather than observation. This is the cold punch or licensed victualler's view of human nature and a wholesome regimen. Mr. Pickwick's references to Messrs. Dodson and Fogg are habitually inaccurate. He represents that Mr. Fogg refused to see him till joined by his partner, Mr. Dodson. Solicitors do not usually summon all the members of the firm to receive a client or an opponent. Nor, if Dodson and Fogg were as rapacious as he represents, is it easy to see why two partners should attend the trial, when it is certain that the Taxing-Master would allow remuneration for one only. The alleged purpose of their attendance is even stranger than the fact. Mr. Dodson, it is said, produced the plaintiff's umbrella, and Mr. Fogg her pattens.<sup>2</sup> Why? How could the pattens or umbrella be evidence against the defendant, unless they were gifts from him to the plaintiff, which was not alleged? But a more conclusive instance of inaccuracy occurs in an account of a cricket match between Muggleton and Dingley Dell, at which Mr. Pickwick and his friends were present. These villages are situated in Kent, once the opponent on equal terms of All-England, a county whose sons may justly claim that, winning or losing, they have always played the game to the end, as behoves good sportsmen and compatriots of Fuller Pilch, of Wenman, and of Alfred Mynn. On the occasion narrated by Mr. Pickwick, Muggleton won the toss, and elected to take first innings. A good start was made, and at the luncheon interval the score was 54 for two wickets. Mr. Pickwick and his friends

<sup>1</sup> i. 363.<sup>2</sup> ii. 100.



partook, with more zest than discretion, of the "cold but capital" refreshments provided, and they appear to have been so well satisfied with the wine that they remained at the inn when the players returned to the field. It was not till past midnight that the Pickwickians left the Blue Lion, and returned to their host's, extremely drunk, and greatly scandalising the ladies of the family. Mr. Pickwick was no sportsman, and his offence against good manners might have been forgiven. He is not the only man who has found cricket on the hearth an easier and more attractive game than cricket on the heath. But he has chosen to suggest that the cricketers were such as he. The game, he asserts, was abandoned by eleven men of Kent before an innings was completed! "In an early period of the winning game," he says, "Dingley Dell gave in, and allowed the superior prowess of All Muggleton."<sup>1</sup> If Mr. Pickwick is so inaccurate in matters which are indifferent, how are we to credit charges made by him in matters which affected him closely, and aroused his keen resentment? But Dodson and Fogg are dead; their voices can never now be raised to confute their slanderer.

Let us consider the case as it is narrated by Mr. Pickwick.

Mrs. Bardell, the plaintiff in the action, was the widow of a gentleman engaged in the Excise Department of the Civil Service. Mr. Pickwick, the defendant, was a retired tradesman, possessed, as was admitted at the Bar, of considerable means.<sup>2</sup> He had remained a bachelor to the mature age when bachelors commonly marry their housekeepers and love affairs

<sup>1</sup> i. 131.

<sup>2</sup> ii. 124. He appears to have been engaged in the sugar trade, ii. 463.

are especially deadly. He boasted an unimpaired digestion, an undiminished appetite. Physically he was fitted for Cæsar's body-guard, for he was fat, and sleek-headed, and (with a memorable exception) he slept o' nights. Several times in the short space covered by the *Pickwick Papers* he is recorded to have been intoxicated. Once he was imprisoned in the public pound;<sup>1</sup> on another occasion he resisted the public peace officers, and was ordered to give bail for good behaviour.<sup>2</sup> It is, perhaps, more pertinent to observe that he constantly exhibited the philandering propensities which are specially nauseating when, as in his case, the privileges allowed to age are claimed and exercised with the ardour of youth. He kissed "the young ladies,"<sup>3</sup> he kissed Bella,<sup>4</sup> he occasioned a scandal by unbecoming gallantry and kissing his hand to a married lady at a public meeting.<sup>5</sup> It was proved at the trial that, on yet another occasion, he caused the projected marriage of a lady to be broken off, in circumstances very inadequately described by himself as a "romantic adventure."<sup>6</sup> Moreover, released from business cares, he now, for the first time, enjoyed unstinted leisure, and had no more absorbing pursuit than some trifling antiquarian researches. For two years he had occupied rooms in the residence of Mrs. Bardell, and, if he possessed the inclination, did not lack the opportunity of making his court to the "comely" widow, whose "agreeable appearance" and "exquisite talent" in cooking he did not fail to note.<sup>7</sup>

<sup>1</sup> i. 356.<sup>2</sup> i. 474.<sup>3</sup> i. 193.<sup>4</sup> i. 527.<sup>5</sup> i. 243.<sup>6</sup> ii. 118, 119; and see ch. xxii.

<sup>7</sup> Mr. Fitzgerald has pointed out that the illustrators of Mr. Pickwick's memoirs have given us a caricature of Mrs. Bardell, and represented her as a "swollen, dreadful creature," a woman of "gross and enormous proportions," thus treating her as badly as Mr. Pickwick.

It is probably, therefore, doing him no injustice to assume that for two years his gaitered legs had trod the primrose path of dalliance. His thoughts constantly ran on love affairs. His mind, we are told, when sleepless and far from home, "reverted to Mrs. Bardell."<sup>1</sup> He assisted the clandestine courtship and palliated the runaway match of one of his friends and followers. He was the author of a Theory of Proposals of Marriage,<sup>2</sup> which deserves to be as celebrated as his "Speculations on the Source of the Hampstead Ponds," and certainly bears traces, in spite of his disclaimer, of being deduced from long and arduous practice. This theory he expounded, in the tone of a professor addressing his pupil, to a gentleman who had already made several temporarily successful experiments in the art. Mr. Pickwick's friends appear to have given credence to the claim made by Mrs. Bardell; and, indeed, it is a remarkable fact that her case was proved almost entirely by witnesses friendly to the defendant. If, as Butler says—

"Is not the winding up witnesses  
And nicking, more than half the bus'ness?"

the plaintiff's case must have been presented to the jury in circumstances of unusual difficulty.

When Mr. Wardle, one of Mr. Pickwick's friends, heard from him something of the facts, he "laughed till the glasses on the sideboard rang again," and remarked, "For a case in which there's nothing suspicious, this looks rather queer, eh, Pickwick? Ah, sly dog, sly dog!"<sup>3</sup> Even Mr. Pickwick's own denials read like admissions. When he received the solicitors' letter

<sup>1</sup> i. 426.

<sup>2</sup> i. 449.

<sup>3</sup> i. 338.

stating that an action would be brought against him, he said "Mrs. Bardell would never do it; *she hasn't the heart to do it.*"<sup>1</sup> This seems more like reliance on the plaintiff's affection for him than on the absence of any promise of marriage. It is true that Mr. Pickwick added, "she hasn't the case to do it. Ridiculous! Ridiculous!" but it is not surprising that after such a prelude the denial brought from Mr. Wardle only "a short, dry cough."<sup>2</sup>

Mr. Winkle, another of Mr. Pickwick's friends, deposed to a circumstance strongly corroborating the plaintiff's story. He remembered, he said, calling at the plaintiff's house and seeing that "the defendant, Mr. Pickwick, was holding the plaintiff in his arms, with his hands clasping her waist; the plaintiff appeared to have fainted away."<sup>3</sup> He heard the defendant call the plaintiff "a good creature," and ask her "to compose herself, for what a situation it was if anybody should come," or words to that effect. This was the impression on his mind, but he could not swear that the words used were not: "My dear Mrs. Bardell, you're a good creature; compose yourself to this situation, for to this situation you must come," or words to *that* effect. This testimony was confirmed by the evidence of two other witnesses, friends of the defendant. The plaintiff was not, of course, according to the law at that time, a competent witness; nor was the defendant. But he has chosen to give an account of this circumstance in his memoirs,<sup>4</sup> in which he admits that he had asked the plaintiff, when alone with her: "Do you think it's a much greater expense to keep two persons than one?" and similar questions,

<sup>1</sup> i. 337.

<sup>3</sup> ii. 117.

<sup>2</sup> i. 338.

<sup>4</sup> Ch. xii.

which he himself would probably have classified as the Proposal Implied, Illusory, or Oblique.<sup>1</sup> Mr. Pickwick afterwards alleged that he intended to allude to a man named Weller, whom he proposed to engage as his servant. That he should converse on so commonplace a subject in so mysterious a manner is extremely improbable; and it ought to be noted that at this time Weller was actually in service at an hotel and had given no intimation that he wished to leave it. It is not surprising that Mr. Pickwick's friends coughed slightly and looked dubiously at each other when Mr. Pickwick suggested this explanation of the incident. Moreover, there was no cross-examination to show that the conversation had relation to Weller, and the whole reference to him was, probably, an afterthought.

It has been suggested that the letters from Mr. Pickwick to Mrs. Bardell did not much strengthen her case. The short note, "Dear Mrs. B. Chops and tomato sauce. Yours, Pickwick," especially has been made the subject of ridicule, as though it treated only of the commonplace matters which lie on the surface. In truth, it is mere symbolism: a love message. There is some excuse for the general failure to see the significance of the letter; for the plaintiff's advocate, able as he was, and though he acutely explained the reference in another letter to a warming-pan as a cover for hidden fire, was here at fault. That there was some hidden significance he realised. "Gentlemen," he said, "what does this mean? . . . Chops!

<sup>1</sup> Sir Frank Lockwood pointed out (*The Law and Lawyers of Pickwick*, pp. 82-85) how very fortunate a thing it was for Mr. Pickwick that he could not be called as a witness. "If Mr. Pickwick had been called he would have been cross-examined. . . . What would have been left of Mr. Pickwick after that process had been gone through?"



Gracious Heavens! and tomato sauce. Gentlemen, is the happiness of a sensitive and confiding female to be trifled away by such artifices as these?" But as a distinguished judge, the late Lord Fitzgerald, pointed out,<sup>1</sup> Mr. Serjeant Buzfuz failed here to make a striking point in favour of his client. He forgot that the old, popular name for tomato was "love-apple," and as love-apple Mrs. Bardell would have known it. That, as Lord Fitzgerald said, is the mystic meaning of the expression. It was of love, not vegetables, that Mr. Pickwick was thinking. The symbol is striking. The tomato, green at first, recalls the green sickness which immature love is constantly called in old writers. Later it matures into a robust, flaming redness, fit symbol of the master passion of man's life. Add to this that the word "chop" or "chops" means the mouth, the instrument of osculation, as Serjeant Buzfuz might have called it, and Mr. Pickwick's meaning is obvious. True, the word, which has ample Shakespearean authority, has fallen into disrepute, and is now slang. But to Mr. Pickwick that would have been no objection, and if Mrs. Bardell thought the expression a little coarse, much is forgiven to a lover. Hence, it is clear that Mr. Pickwick spoke of "chops and tomato sauce" as another man, writing to his sweetheart, would say "love and kisses." The sentiment would seem a little above Mr. Pickwick's usual level; but he took his imagery, both the apples and the kisses of his mouth, from the oldest love-song in the world.

In the course of further evidence at the trial, Mrs. Sanders, a neighbour of the plaintiff, proved that she had heard Mr. Pickwick ask the plaintiff's little boy

<sup>1</sup> *Bardell v. Pickwick*, p. 53. By Percy Fitzgerald, F.S.A. (1902.)



*how he should like to have another father.* Mr. Pickwick did not venture to deny that he used this significant expression; nor is any attempt made in his book to explain it away. It is evident that there was running in Mr. Pickwick's mind Bacon's sentence, "A man that's married is a man that's pa'd." But in cross-examination it was suggested that his question referred to a baker whom he thought the plaintiff was about to marry. If this suggestion was made seriously, the jury must have been asked to believe that Mr. Pickwick was in the habit of discussing with a boy of eight or ten the love affairs of his landlady. But the obvious answer is that the suggestion, if true, could have been substantiated by the evidence of the baker. Yet Mr. Pickwick did not venture to put him in the box. It is significant that when, years after, Sir Francis Burnand wrote the libretto of the cantata bearing Mr. Pickwick's name, he felt it necessary to excuse his hero's infidelity by giving to this airy, anonymous baker a local habitation, though not a name, and by introducing a representation of him in the flesh before the eyes of an astonished audience. Sir Francis Burnand's usual shrewdness was disarmed by the suggestion which, in Mr. Perker's language, was intended to throw dust in the eyes of the judge.

This allusion to himself or some other person as the probable future stepfather of the plaintiff's son is the only part of the plaintiff's case not corroborated by the defendant's friends, or admitted by himself. Some evidence was given of general reputation of an engagement between the parties, and some by the man Weller apparently intended to indicate the unscrupulous nature of the defence; and this practically concluded the plaintiff's case. It is idle to say upon this

that there was nothing from which the jury could infer a promise of marriage; and the defendant called no witnesses.<sup>1</sup> The verdict the jury gave for the plaintiff (for £750) was eminently reasonable; and if injustice was done to Mr. Pickwick, it must have been from some cause not brought within their cognisance.

Did Mr. Pickwick, then, suffer from any inability to present his case to the Court? On the contrary, he was represented by a very respectable and competent solicitor,<sup>2</sup> and by counsel "at the very top of his profession,"<sup>3</sup> who was said to lead the Court by the nose. The defendant's advisers were agreed "it was lucky that they had prevented the other side from getting him."<sup>4</sup> It is expressly recorded that Mr. Serjeant Snubbins "did the best he could for Mr. Pickwick in a long and very emphatic address, in which he bestowed the highest possible eulogiums on the character and conduct of Mr. Pickwick."<sup>5</sup> The case was tried by a London jury, at the Guildhall, where one would not suppose sentiment to abound unduly; and the summing-up was a model of impartiality. The best testimony to the fairness of the verdict is that Mr. Pickwick never sought to question it, but accepted the result, not indeed good-humouredly, but in dogged silence. Against the advice of his friends, he refused to pay the damages, and was imprisoned for a time in

<sup>1</sup> Very probably, evidence of an express promise was given, but, as Mr. Pickwick does not record it, the point may be left out of consideration. Had there been no evidence to support the verdict, the defendant's counsel would certainly have taken the point at the hearing or on motion for a new trial.

<sup>2</sup> It is significant that, in order to justify Mr. Pickwick, it has been suggested that Mr. Perker was incompetent. He was, in fact, so astute and resourceful a man as to be a successful election agent in a very corrupt parliamentary election. The esteem in which Mr. Perker continued to be held by his difficult client is sufficient to disprove the charge.

<sup>3</sup> ii. 39.

<sup>4</sup> ii. 49.

<sup>5</sup> ii. 125.

the Fleet, vowing he would never, never pay a single farthing—a promise he kept little better than the one he had made to the plaintiff.

The fact is clear that, like the other famous litigant who instructed his advocate to abuse the plaintiff's attorney, Mr. Pickwick had no case. His friends—Wardle, Winkle, and Tupman—all thought the plaintiff's claim well founded. Perker, his solicitor, said so in plain terms. The defendant's only course, he said,<sup>1</sup> was "to cross-examine the witnesses, trust to Snubbins's eloquence, *throw dust in the eyes of the judge* and themselves on the jury." Even to humour an intractable client he refused to join in the defendant's abuse of Messrs. Dodson and Fogg; they were, he said, "capital fellows."<sup>2</sup> It is not surprising, therefore, that Mr. Pickwick at one time attempted to take the case out of his hands. It appears to have been suggested by a friend of the defendant, that an unscrupulous defence, obscurely indicated as being in the nature of an *alibi*, should be set up. This was not done; but the servant, Weller, was actually sent to the plaintiff "to make," as Mr. Perker said, "some offer of compromise."<sup>3</sup> The negotiation failed; but this visit was the real foundation of much of the abuse with which Mr. Pickwick afterwards befouled his professional opponents. Sam, we are told, was sent with some money, ostensibly to pay rent, but, in fact, as one may suppose, with a quite different purpose. Whatever "offer of compromise" Weller made appears to have been declined, and the mission then assumed another character in Mr. Pickwick's eyes. "Mr. Weller," runs the history, "recounted to his master such indications of the sharp practice of

<sup>1</sup> ii. 40.<sup>2</sup> ii. 39, 101.<sup>3</sup> ii. 40.

Dodson and Fogg as he had contrived to pick up.”<sup>1</sup> “Contrived to pick up” is excellent, indeed; it is strange that Mr. Dickens allowed the phrase to pass unaltered.

Looking at all the circumstances of the case—the uncontradicted mass of evidence in favour of the plaintiff, given by witnesses friendly to the defendant; the advantages which the defendant’s wealth gave him in securing the services of eminent advocates; the competence and impartiality of the tribunal, and the acquiescence in the result of a litigant who would have fought like a railway company had there been the least chance of success—it is easy to see that the litigation could have had no other result than the one Mr. Pickwick narrates. To the lay mind it would, surely, appear rather to the credit of Messrs. Dodson and Fogg that they assisted a poor and friendless woman to assert her rights. The fact that Mrs. Bardell had a just claim disproves the first charge of misleading the Court, and reduces the second from the offence of maintenance to what is, at most, a somewhat unprofessional adoption of a just cause. But is it true, as alleged, that the solicitors agreed not to make any charges unless they got them out of the defendant? Such an agreement would, of course, be illegal and void;<sup>2</sup> and the fact that when, Mr. Pickwick having made default in payment, Mrs. Bardell was sued for the costs, she set up no such agreement, is not conclusive. But it is clear that, if such a contract had existed, she might advantageously have raised the point with a view to costs, and to call the attention of the Court to the unprofessional conduct of its officers. Not only did Mrs. Bardell, in fact,

<sup>1</sup> i. 500.

<sup>2</sup> See the 33 & 34 Vict. c. 28, s. 11.



make no such defence, but she never even stated that the facts were as alleged. The man Weller did not venture to assert that he had any higher authority for his allegations than a Mrs. Cluppins, a neighbour of the plaintiff, who could have had no first-hand knowledge of the circumstance. Mrs. Bardell's position, perhaps, suggested that the professional services of Messrs. Dodson and Fogg were prompted in part by charity. And this is their reward! When our critics complain that the quality of our mercy is strained, they might well remember that so are our charities misconstrued. Had the charge been true, it would have served Mr. Pickwick greatly to have proved it at the trial; yet he called no witness, and there was nothing given in evidence but a volunteered remark of Weller's, to prove what must have immensely prejudiced the jury in his favour. He made no attempt to get the matter referred for inquiry to a Master. Probably no professional men are subjected to such close surveillance as solicitors; but the assailants of the memory of Messrs. Dodson and Fogg may be challenged to show that the attention of the Court, or of any disciplinary authority, was ever called to their conduct in the matter. Mr. Pickwick records that they continued for years in large practice; and in the absence of anything higher than hearsay in the second degree, the charge may safely be dismissed as frivolous.

It was never doubted that Mr. Pickwick was perfectly able to discharge his debt to Mrs. Bardell, but he appears to have had no goods which could be taken in satisfaction of the judgment. A writ of *ca. sa.* was therefore issued, and the defendant elected to remain imprisoned for an indefinite period rather than pay

what a jury of his country and his own class had declared to be justly due from him. He adhered to this decision for a considerable time, and Messrs. Dodson and Fogg were compelled to apply to their client to reimburse them their payments and remunerate them for their services. She failed to do this, and process of execution was issued against her. Mr. Pickwick's friends, who were anxious for his health, seized the opportunity of appealing to his vanity to do what his sense of justice had been insufficient to accomplish. Mr. Perker, his astute solicitor, was selected as most likely to shake his resolution. The speech that gentleman addressed to his refractory client is a monument of adroitness. Until after the trial he had refused to join in the abuse of Messrs. Dodson and Fogg; but now, to please his client, they were "Freeman Court sharks," and "a couple of rascals";<sup>1</sup> and he even condescended to make vague and ridiculous threats of indictments for conspiracy, the recollection of which must for years have caused him long and silent laughter. He represented that to enable Mrs. Bardell to obtain her release would be an act of benevolence on the part of her debtor; but even then he could not help telling Mr. Pickwick that he, the defendant, was "solely, wholly, and entirely" responsible for the duration of her imprisonment, and that his resolution to remain in the Fleet would be attributed (truly enough) to "sheer, dogged, wrong-headed, brutal obstinacy." When he had exhausted his powers of persuasion, an admirable piece of pantomime was enacted to increase the effect. Mr. Winkle, one of the unwilling witnesses for the plaintiff, entered with his bride, asked pardon of Mr. Pickwick for being married,

<sup>1</sup> ii. 355, 357.



and flattered the old gentleman into the belief that his matrimonial felicity depended on Mr. Pickwick's residing outside the prison. The inflexible resolution gave way; the good man rose to an unusual height of benevolence, consented to forgive the woman he had injured, to pay a small part of the debt he owed, and to obtain his liberty.

One error of judgment Mr. Perker made in his appeal to his client. Mrs. Bardell was, of course, anxious to be released, and advantage was taken of this to force her to waive her claim to the damages the jury had awarded her, provided that the costs of the suit were paid. Mr. Perker produced a confession from her (strictly conditional on the payment of these costs) that "this business"—of the action—"was from the first fomented and encouraged and brought about"—not, be it observed, suggested or originated—"by these men, Dodson and Fogg," and that she "deeply regretted having been the instrument of annoyance or injury" to Mr. Pickwick; and further, that she begged his pardon. Mrs. Bardell was, no doubt, feeling sore at her arrest; but Mr. Perker probably protested too much when he said that this communication was spontaneous. Mr. Pickwick attached no importance to the document, did not insert it in his memoirs, commented on the condition on which it was given, and observed, with unwonted irony, that it was "a valuable document indeed!" What Mr. Pickwick thought worthless as a vindication of his conduct, his critics need not too seriously discuss.

It appears to be admitted that Messrs. Dodson and Fogg had always treated Mr. Pickwick personally with courtesy, and it is clear they showed no resentment of abusive and violent conduct towards themselves, which

Mr. Pickwick's own servant and advisers deprecated and deplored.<sup>1</sup> Had they entertained any vindictive feelings, they would certainly have insisted on the judgment-debtor's remaining in prison till the costs were paid and the ordinary formalities of a discharge had been observed. In fact, they were not paid till long after Mr. Pickwick's release, to which the solicitors consented immediately on receiving an undertaking that their claim should be satisfied. In later years Mr. Pickwick appears to have recalled the Bardell episode in his career with impatience; but his regret never led him to do justice to his opponents. He retired to the country, and, like another hero who made but a sorry figure before the judges, "a babbled o' green fields." But time did not assuage his hatred of Messrs. Dodson and Fogg; the soothing influence of the fields and the "Greyhound" at Dulwich failed to mitigate his animosity, and the solicitors still remain victims of the unfair penitence of this retired Lothario.<sup>2</sup>

Mr. Pickwick, however, seems to have doubted whether his own fancied wrongs would be sufficient to establish any serious grievance against his opponents. He therefore repeated a story which he obtained by eavesdropping, or, in his own words, by "listening to

<sup>1</sup> i. 367; ii. 473. Sir Frank Lockwood, referring to Mr. Pickwick's call on the plaintiff's solicitors, said that in their letter "there was nothing to justify the very violent language of Mr. Pickwick"; and further, Mr. Pickwick "had absolutely nothing to complain of in their conduct, and I venture to say it was most reprehensible to use the language he did" (*Law and Lawyers of Pickwick*, pp. 59, 69). Mr. Fitzgerald agrees that they were most forbearing, and even indulgent.

<sup>2</sup> Mr. Fitzgerald calls attention to the "unreasoning fury" of Mr. Pickwick, to his arrogant, unrestrained, and vindictive character, to his gratuitous assumption that it was the solicitors who instigated the case, to the good temper and restraint with which they heard his scurrilous abuse, and to the extreme moderation of their costs.

the murmured conversation" of Messrs. Dodson and Fogg's clerks.<sup>1</sup> Mr. Fogg, he says, refused a sum tendered him by a litigant in satisfaction of debt and costs, falsely alleging that further costs had been incurred by the filing of a declaration; and that he filed the declaration after the tender was made in order to incur the costs he claimed. This would, of course, be fraudulent. But Mr. Pickwick does not record that he, who went to Ipswich and elsewhere, like a corpulent and belated Don Quixote, intent on righting wrongs which did not affect him, ever took any steps to expose the men he hated so deeply, or attempted to prove the charge he made. This, like most of his serious allegations, rests entirely on hearsay, and might be disregarded as the babble of a dissipated and disaffected clerk. But the story is, in fact, a mere *cliché*—one of the "good stories" or common-form jests handed down from one generation to another, the blanks of which are from time to time filled in with the name of any person happening to be obnoxious to the speaker. Mr. Perker, or his clerk Lowten, could have told Mr. Pickwick a score of similar anecdotes. There is the story of the law-student whose answer to every question in his examination paper was, "it all depends"; the story of another candidate who, being required to draw a common conveyance, sketched a hansom cab. There is the story of the examiner who, on being told that the first thing to be done in an action is to "get something on account of costs," delightedly passed the student without further question. A dozen such Joe Millers may be heard any day in Chancery Lane; but,

<sup>1</sup> i. 360. Sir Frank Lockwood, an excellent judge of witnesses, said he could not place much reliance upon the clerk Wicks.

probably, it never occurred to any one but Mr. Pickwick to believe them.

And this is all. Everything tending to support Mr. Pickwick's charges has been recapitulated. It is upon this medley of inconclusive facts and unsupported assertions that Mr. Pickwick based his indictment of two honourable gentlemen. It says little for his readers' sagacity that he should have obtained so general a concurrence in his views; it says as little for their chivalry that no one has attempted a defence of the men he assailed. We have constituted ourselves a Court of Appeal from our ancestors; we have undertaken to review all the judgments of history. Nero is a patriot with enlightened views on over-population; Cromwell, the arch-traitor of our grandsires, is a saint; the hand of the restorer has removed the blue beard with which some too uxorious wight had defaced the virile features of the eighth Henry. Yet Dodson and Fogg are still condemned without a hearing; the man whose conduct compares so ill with theirs is still accounted a hero. But we, at least, have recorded our protest, and may claim to have vindicated the accused. In doing so, we have been compelled to reflect upon the character of Mr. Pickwick, and it may seem an ungracious thing to recall the errors and follies of one who is now no more; for Mr. Pickwick has been dead these fifty years,<sup>1</sup> and is entitled to the exemption of the dead from adverse criticism. But the guilty must be condemned that the innocent may be absolved. And not alone has Mr. Pickwick passed "beyond these voices"; the laurels have faded from the lofty brows

<sup>1</sup> He died in 1862. See the obituary notice, "The Death of Samuel Pickwick," reprinted from one of the daily papers of May 2, 1862, in the works of Messrs. Besant and Rice.

of Dodson and Fogg; Mrs. Bardell, the victor-victim, long since was laid upon death's purple altar; the actions — or, rather, the action — of the just has blossomed only into the weed of calumny. Complete reparation is now impossible; nor is it probable that it will be attempted. A world which talks an infinite deal of nothing, has yet chosen the ungracious part of Antonio. It is as like to rail on us again. But the careful student will be of a different opinion. The man who, having carefully and critically re-read the *Pickwick Papers*, retains an unfavourable impression of Messrs. Dodson and Fogg, will have proved himself better able than Mr. Pickwick to resist conviction.



## THE ATTORNEY IN THE POETS

THE attorney enters the realm of poesy with a bound. Long neglected as a theme for a song, it is upon a throne he is first descried by the poets. True, it was, alas! the throne of dulness, but at least among the dunces Attorney Tibbald was declared monarch. In the first edition of the *Dunciad*, the Goddess of Dulness proclaimed—

“ I see a King ! who leads my chosen sons  
To lands that flow with clenches and with puns ;  
Till each fam'd theatre my Empire own ;  
Till Albion as Hibernia bless my throne !  
I see ! I see !—then rapt she spoke no more,  
God save King Tibbald ! Grub-street alleys roar.”

Thereafter attorneys were long to be denounced by the poets, denounced in good set terms for their crime of attorneydom. But the attack on Theobald was merely personal. If Pope had cared to analyse the deteriorating effect of the profession upon Theobald's verses, the damage done to Theobald's practice by his leaning to verse, we might have some illuminating couplets on the relation of law and literature. But Pope was too angry for analysis; he threw the first stone that came to hand at the hapless man. Then, having declared him King of Dulness, the only other injury in the power of the King-maker at Twickenham was to dethrone him; and this he did. So Theobald, the attorney, disappeared, and the righteous



condemnation by poesy of all his class was for a time deferred.<sup>1</sup>

But if Pope's animosity was personal, the general voice of the poets was raised against attorneys as a class. To most of the singers a personal grievance was needless, they felt sufficient bitterness against the whole of the profession to barb their wit. All the professions are, of course, fair mark for satire; every parson is a hypocrite, every doctor a quack, but most of all and with most conviction, the censors declare that every lawyer is a rogue. Ned Ward, himself one of the poets pilloried in the *Dunciad* (and as he plaintively said without provocation on his part), presented this view. In "A Journey to H——, or a visit paid to the D——," he pictured all classes brought to the bar of hell for judgment: clergymen, doctors, barristers, attorneys, poets, pamphleteers, printers, drunkards, gluttons, and the rest. "Hell's Attorney-General" stated the charge. The Barristers were corrupt and acted only for fees, the Clerks of the Court, "the lesser scribes that do the greatest hurt," promoted litigation. This charge he pressed at length, then rested.

" B'ing thus refresh'd, he turn'd his sawcer Eyes,  
And to th' Attorneys thus himself applies,  
You, who in times of old did Ink-horns wear  
In Leathern Zones, and Pens in twisted Hair,

---

<sup>1</sup> Theobald was not the only attorney in the *Dunciad*. A couplet was spared for Giles Jacob, the author of *The Accomplished Conveyancer* and many other law books, and still remembered by his *Dictionary*—

" Jacob, the scourge of Grammar, mark with awe,  
Nor less revere him, blunderbuss of Law."

Another line—

" Horneck's fierce eye and Roome's funereal frown,"

bracketed two more lawyers, who were friends, and in turn Solicitors to the Treasury.

Whose Locks were comb'd as lank, and cut as short,  
As best should seem the pleasure of the Court,  
Who now on Earth as num'rously abound,  
As Rooks and Magpies in a new-sown Ground :  
Then turning to the Judge, he cries, my Lord,  
And thus runs o'er their Crimes upon record ;  
These by foul Practice and Extortion thriv'd  
And beggar'd half the Country where they liv'd ;  
Reviv'd old Discords, kindl'd up new Flame,  
And sow'd Contention wheresoe'er they came,  
The Purses pick'd of each laborious Slave,  
Who plough'd and thrash'd to feed some rooking Knave.  
Buoy'd up with hopes he should victorious be  
Would sweat and toil a week to earn a Fee.  
Then to next Market ride before his Dame,  
And give his Scribe, with scraping Leg, the same ;  
Who bids the Booby Client cheer his Heart,  
And haughtily does bad Advice impart,  
Fear not, says he, I'll make the Rascal smart ;  
But when his Purse had yielded up its Store,  
His Cause proves bad, if he can bleed no more :  
You told me wrong, did several things misplace,  
Agree, agree, it proves an ugly Case.  
Thus, by long Bills, stuff'd with unlawful Fees,  
They tax'd the Farmer as themselves should please :  
Improv'd litigious Suits by ill Advice,  
Eat up full Barns and Acres in a trice,  
And plagued the sinful land, like *Egypt's* Frogs and Lice.  
As they from Leathern Belt to Sword arose,  
And from a rural Grey to Town-made Cloaths,  
The greater value on their Pains they laid,  
The more impos'd the Client still obeyed,  
And scrap'd and bow'd more low at ev'ry word he said."

The sentence passed on these offenders by the Chief Justice would have delighted Jeffreys.

" Amongst old Hags and Furies shall you live,  
There scratch and claw, and in confusion fight,  
Till Hell wants Darkness, and the Heavens Light ;  
There shall you strive to mitigate your Pain,  
And reconcile your Foes, but all in vain.

Furies shall scourge you with their Scorpion Rods,  
Beneath the reach of Mercy from the Gods,  
Thus dwell involved in Night, eternally at odds."

But the publican poet recognised that some of the harm done by attorneys was the fault of persons practising yet unqualified, whose admission to the ranks of attorneys was due to the neglect of those ancient laws which required proper education and examination as a preliminary to practice. The attorneys themselves had long recognised this. *The Compleat Solicitor*, in 1683, had remarked that uneducated and dishonest men were here allowed though quite unqualified to conduct law-suits. "'Tis by the means of these cheating and devouring caterpillars that the honourable Professors of the Law are so often cryed out upon for bribing and taking excessive fees." But the abuse lived long, and towards the close of the century the attorneys were still compelled to urge their grievance with emphasis in the ear of Parliament. These miscreants, Ward said, were not really attorneys, but—

"A spurious sort  
Of Pettyfogs, meer Locusts of the Court,  
Who often help the former to deceive,  
And eat up what the bigger Vermin leave.  
Some by their Shop-board looks were Taylors bred,  
But broke, and on their Backs had scarce a Shred ;  
Not only in their Lives, but Looks, were Knaves,  
Litigious from their Cradles to their Graves.  
Vers'd in these Querks, they felt before they saw,  
After long Troubles did themselves withdraw,  
From making Sutes of Cloathes, to manage Suits of Law ;  
Well knowing it requires an equal skill,  
To make a Lawyer's or a Taylor's Bill.  
Amongst this paltry Crew were Ten to One,  
Bred up to Trades, but by the Law undone :

And thus distress'd, most equitably sought  
 Relief from that which had their Ruin brought :  
 Or else resolved, from being basely us'd,  
 T' abuse the Law, by which they'd been abus'd,  
 So the poor Wretch, who Witchcraft has endured  
 If once she claws the envious Hag she's cur'd.  
 Some in Frize-coats, strait Wigs, and flapping Hats,  
 Great Beards, and dirty Hands, like Counter-Rats,  
 With Looks undaunted, at their Heels a Straw,  
 Bold Teasers and Tormenters of the Law."

In *The History of the London Clubs* Ward afterwards expressed a similar view, and it was not only the law which suffered from the intrusion of unqualified men. Medicine was in as bad a case.

"Of all the Plagues with which our Land is curs't,  
 The Frauds of Physic seem to be the worst,  
 For tho' the Law, 'tis true, abounds with weeds,  
 And from Astrea's Rules too oft recedes,  
 Yet those keen Foxes of such sundry sorts,  
 Who hang in swarms about her awful Courts,  
 By their Male Practice and Prolix Debates,  
 Can only hurt our Pockets and Estates.  
 But baneful Quacks, in Physick's Art unread,  
 To Weaving, Cobling or to Tumbling bred,  
 Or else poor Scoundrels, who for Scraps and Thanks,  
 Swept Stages for their Master Mountebanks,  
 Then to the World destructive Slops commend,  
 And do their poys'nous Cheats to life extend,  
 By vain pretences pick the Patient's Purse,  
 And with sham Med'cines make 'em ten times worse."

Another general condemnation was to be found in the *Gentleman's Magazine*. In "The Honest Countryman's Litany" (1734) we read:—

"From Spiritual courts, citations, and libels,  
 From proctors, apparitors and all the tribe else  
 Which never were read of yet, in any Bibles,  
*Libera me!*

From bayliffs, attorneys and all common rogues,  
From Irish nonsense, their bogs and their brogues,  
From Scot's bonny clabber, their clawing and shrugs,"  
*Libera me !*"

But this gentleman, like Ned Ward, denounced most people; he was a good hater in more than the Johnsonian sense.

For an attorney to have but a share in vituperation at large was a fate too good for him; but Mr. William Woty put this right. Mr. William Woty's is not one of the most famous names in English literature; even the volumes of selections now pass him by unheeded. He lives, perhaps, only by a chance reference in Boswell, as part owner of a miscellany to which the great Doctor contributed. But in his day he was well known in Grub Street and elsewhere. His first verses were attributed to J. Copywell of Lincoln's Inn, and in his own name he published copiously. When his poetical works, in two volumes, were published in 1770, by subscription ("All hail! Subscription! 'Tis to thee we owe, The plenteous fruits, which from invention grow"), more than 550 copies had been subscribed, and the list included names still well remembered. Dr. Johnson himself is there, and so are James Boswell, Esq., Mr. Garrick, George Colman, Esq., Mr. Atterbury, Canon Seward, C. Phillips, and J. Phillips and Mrs. Horneck—perhaps the mother of the Jessamy bride. Now Mr. Woty misplaces no mercy in his judgment; the attorney is a pettifogger, and the pettifogger he proceeds, in a borrowed strain, to depict, his parody being "written in Westminster Hall in the Long Vacation":—

"The Courts are shut—departed ev'ry judge,  
Each greedy lawyer gripes his double fee,  
In doleful mood the suitors homeward trudge,  
And leave the hall to silence and to me.



Now not a barrister attracts the sight,  
 And all the dome a solemn stillness holds,  
 Save at the entrance, where with all her might  
 The *quean* of apples at the porter scolds.

Save that at fives a group of wrangling boys  
 At intervals pursue the bounding ball,  
 Make *Henderson*,<sup>1</sup> the studious, damn their noise,  
 When batt'ring the plaister from the wall.

From ev'ry court with ev'ry virtue crown'd,  
 Where many get and many lose their bread,  
 Elsewhere to squabble, puzzle and confound,  
 Attornies—clerks—and counsel—all are fled.

Contending fools, too stubborn to agree,  
 The good fat Client (name for ever dear),  
 The long-drawn brief, and spirit-stirring fee,  
 No more, 'till Michaelmas, shall send them here.

Some ghost of Jefferies will this floor parade,  
 Some daring pettifogger, stern of brow,  
 Who might have done due honour to the spade,  
 Whirl'd the tough flail, or grasp'd the peaceful plough.

The upstart thing some useful trade to learn,  
 By far more suited to his shallow head,  
 Some trade, by which he might have known to earn,  
 With honest industry, his daily bread.

False pride forbade: nor to himself alone  
 Confines his views, but to his son extends;  
 Forbade the youth, to quirks already prone,  
 To mind the means, so he could gain the ends,

Forbade to bind him 'prentice to a trade,  
 Behind a compter all the day to stand,  
 His birth by work mechanic to degrade,  
 Or wait on customers with cap in hand.

Far from the worthy members of the law,  
 A rogue in grain, he ever kept aloof;  
 From learn'd bum-bailiff learn'd his briefs to draw,  
 And where he could not find, he coin'd a proof.

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<sup>1</sup> An author and bookseller there.



Yet doth this wretch, illiterate as proud,  
With low-life homage, low-life bus'ness meet,  
And pick the pockets of th' unhappy crowd  
Mur'd in the Compters, Newgate, and the Fleet.

Bound by their creditors in durance fast !  
In plaintive murmurs they bewail their fate,  
And many an eager, wishful eye they cast,  
Whene'er the turnkey opes and shuts the gate.

For who to dull imprisonment a prey,  
The pleasing thoughts of freedom e'er resigned,  
From home, from wife, and children dragg'd away,  
Nor cast one longing, lingering look behind ?

Some sharp Attorney must the captive hire,  
Who knows each secret winding of the laws,  
Some previous fees th' attorney will require,  
Before he ventures to conduct his cause.

For you, who traverse up and down this shrine,  
And lounge, and saunter at your wonted rate,  
If in some future chat with arch design,  
Some wag should ask this pettifogger's fate,

In sneering mood some brother quill may say,  
'I've seen him oft at alehouse table sit,  
Brushing with dirty hands the crumbs away,  
And eye the mutton roasting on the spit.

'There in the snug warm corner of the bench,  
Part stain'd with grease, and part defil'd with beer,  
His thirst with cooling porter would he quench,  
And bend his noddle o'er the gazetteer.

'Hard by yon steps, now grinning as in scorn,  
Mutt'ring his oaths and quibbles would he stand,  
Now hanging down his pate, like one forlorn,  
As if some dread commitment was at hand.

'One morn I miss'd him in this custom'd Hall,  
And at the Oak,<sup>1</sup> where he was wont to be,  
His Clerk came down, and answer'd to my call,  
But by yon steps, nor at the Oak was he.

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<sup>1</sup> The Royal Oak, a public-house near the Hall.

'The next I heard (oh melancholy tale !  
 On our profession what a foul reproach !)  
 That he for forgery was confin'd in jail,  
 And dragg'd (oh shameful !) there without a coach.'

#### HIS CHARACTER

Vulture, the arrant'st rascal upon earth,  
 At length is caught and into Newgate thrown,  
 Fair honesty disclaim'd him at his birth,  
 And villainy confess'd him for her own.

Grown old in sin, at no one crime dismay'd,  
 'Gainst Nature's cries he arm'd his callous heart ;  
 For when his father was to death convey'd,  
 He growl'd—and damn'd the slowness of the cart.

*Jack Ketch*, to show his duty to his friend,  
 Will soon confirm it with the strongest tie,  
 But on such ties what mortal would depend,  
 A rogue he liv'd, and like a rogue he'll die.

Now prest with guilt, he feels its sharpest sting,  
 Great his transgressions, and but small his hope,  
 He gave the sheriff (all he had) a ring,  
 He gain'd from Justice (all he fear'd) a rope.

No farther seek his vices to disclose,  
 But leave the culprit to his dark abode,  
 There let him rest, till breaking his repose  
 The hangman summons him to Tyburn road."

The attorney was dirty, illiterate, poor, a rogue in grain ; but to say this was not enough. Mr. Woty felt so strongly on the theme that he lavished upon it an illustration—the only one in the volume—and the poem concludes with a rough drawing of the gallows. Moreover, to teach the race by example as well as precept, he took the opportunity of being companion and (unqualified) legal adviser to Earl Ferrers to obtain for himself a rent-charge of £150 upon the family estate.

The last thirty years of the eighteenth century are rich in references to the profession. This was, indeed, the period when popular attention was first effectively directed to its affairs. Earlier attempts at regulation had been only partially and temporarily successful, but the act of 1734 had reduced the body to small and manageable dimensions and laid the foundation of modern rules affecting the class. After nearly half a century's experience of its work, further changes were seen to be necessary. The better men in the profession were petitioning Parliament to take steps to exclude from their ranks those disqualified by lack of education or character. Of external critics the judges were amongst the most severe, and the attorneys, once the favourites of the courts, now had little chance of success there. The very highwaymen were like-minded, if one may trust a modern interpreter. "I had no more liking for Baverstock," says Mr. Marriott Watson's hero, Dick Ryder,<sup>1</sup> "than I should spend upon an Attorney, save that he was a fellow of spirit." The poets, then, only followed a fashion when they wrote as did Mr. Woty. The full-blooded denunciation of attorneys by the gentleman who concealed himself under the name of "Expertus" doubtless represents fairly the general feeling. "The Lawyers," a poem which has survived only in *The Muses' Mirror*,<sup>2</sup> is set "to the tune of the Georgians."

"Of all professions on the Globe,  
The coifed gown and scarlet robe  
Most mis'ry do create ;  
Instead of soothing down your cares,  
They serve but to perplex affairs,  
And bring them to debate.

<sup>1</sup> *Gallopings Dick*, p. 174.

<sup>2</sup> Vol. i. p. 111 (A.D. 1778).

Whether your cause be good or bad,  
 Whilst there is money to be had,  
     They'll still your suit maintain :  
 It is the business of their life  
 'Twixt greatest friends to stir up strife  
     Whose quarrels are their gain.

There are such quibbles and such quirks  
 Between attorneys and their clerks,  
     Their Clients to confound ;  
 That all their study, day and night,  
 Is to make wrong appear like right,  
     And ring the changes round.

Since lawyers are such common pests,  
 Avoid them as you would the nests  
     Of hornets nearly flown ;  
 And whilst you live, beware of law,  
 It is the hungry lion's paw  
     That tears the flesh from bone.

But hold, my muse, let's not run on  
 As if we never would have done,  
     But seek what to defend :  
 Oh yes ! (in justice be it said)  
 They will (when all their fees are paid)  
     A ref'ence recommend."

It is interesting to learn that the art of "smashing the lists," the practice of compelling litigants to compromise, or refer to arbitration, cases which it would be tedious to try, was known so long ago as 1778.

It is pleasant for the professional reader to turn aside from the main current of denunciation to an eddy of song where in 1774 the attorney received only good-humoured censure. This is in no less desirable a place than Goldsmith's *Retaliation*.

Mr. Hickey—an eminent Irish attorney, as Professor Masson explained—is the capon of that excellent feast at which Garrick was the salad and Burke was "tongue

with the garnish of brains." However eminent in his day, Mr. Hickey must be accounted fortunate in having acquired immortality in such goodly company. He was perhaps "a mere ordinary man," without pretensions to genius; he wrote nothing save his briefs and cognovits, but he obtained by accident a wider fame than some more eminent contemporaries, because though not the rose he grew near it. His portrait stands at full length between those of Garrick and Reynolds.

"Here Hickey reclines, a most blunt pleasant creature,  
And slander itself must allow him good nature;  
He cherished his friend, and he relished a bumper;  
Yet one fault he had, and that one was a thumper.  
Perhaps you may ask if the man was a miser;  
I answer, No, no; for he always was wiser.  
Too courteous, perhaps, or obligingly flat?  
His very worst foe can't accuse him of that.  
Perhaps he confided in men as they go,  
And so was too foolishly honest? Ah no!  
Then what was his failing? come tell it, and burn ye,  
It was—could he help it?—a special Attorney."

The indictment is here less accurately expressed than in the other counts. To be a special attorney—to be appointed by a power of attorney to represent a friend—might happen to any man; but to be a general attorney, an attorney-at-law, is a graver offence, and it was of this that Hickey was guilty. Little else is known against him. Like all men who did not sufficiently revere Dr. Goldsmith, he incurred the displeasure of John Forster. Goldsmith's excursion to Paris in 1770, we are told, "was not made more agreeable to Goldsmith by an unexpected addition to the party in the person of Mr. Hickey—whose habit of coarse raillery was apt to be indulged too freely at



Goldsmith's expense." <sup>1</sup> But even Mr. Forster admits that once, at least, Mr. Hickey told the truth. "Goldsmith sturdily maintained that a certain distance from one of the fountains at Versailles was within reach of a leap, and tumbled into the water in his attempt to establish that position." With that story Mr. Hickey passes from our view. He was fortunate in his friend.

The name of another attorney who stirred the muse has been mercifully withheld. From *An Asylum for Fugitive Pieces* <sup>2</sup> we learn that "David Garrick, Esq., some years ago, had occasion to file a Bill in the Court of Chancery against an Attorney at Hampton, to set aside an agreement surreptitiously obtained for the purchase of a House there; and while the late Edmund Hoskins, Esq., was preparing the Draft of the Bill, Mr. Garrick wrote him the following lines:—

"To his Counsellor and Friend, Edmund Hoskins, Esq., Tom Fool sends greeting.

"On your care must depend the success of my suit,  
The contest, I mean, 'bout the house in dispute;  
Remember, my friend, an Attorney's my foe,  
And the worst of his tribe, though the best are so-so.  
In law, as in life, I know well 'tis a rule,  
That a knave will be ever too hard for a fool:  
To which rule one exception your client implores,  
That a fool may for once turn the knave out of doors."

One cannot be surprised at the vehemence of Garrick's detestation. For a litigant to dislike his opponent's attorney, at least as much as his opponent, is a common case; but when opponent and attorney are combined in one person, one must look for a breach of the peace and may be well content to escape with an epigram. That he should think the attorney whom he sued "the worst

<sup>1</sup> *The Life and Times of Oliver Goldsmith*, ii. 220.

<sup>2</sup> p. 65.



of his tribe" was natural; that he should think the best but so-so was a little ungrateful to Sir John Hawkins, who had been at some pains to secure his admission to the Club, and even inspired Garrick's successful appeal to the Chancellor in this very matter. Garrick had happened to mention to Sir John the events by which he thought he saw himself deprived of opportunity to purchase a house he wanted, without hope or remedy. Sir John informed him of a similar case in which equity had interfered, looked up the report, and gave Garrick a note of it. This Garrick apparently mislaid, and on the eve of trial Sir John, again appealed to, obtained the volume containing the report, waited at the theatre, and handed it to Garrick to give to his solicitor. And Garrick not only forgot in his rhymes what he owed to this friendly attorney, but omitted for months to let his friend know the result of the suit!<sup>1</sup> But attorneys in the times of the Georges were a mark for all shafts. It is a little hard to see why; they were poor enough to be liked. Yet the Rev. Mr. Bramston in his *Art of Politics* notes with approval that,

"Now wholesome laws young senators bring in,  
'Gainst gaols, attorneys, bribery and gin."

Erskine declared to Boswell that he loved him "more than attorneys love by cheats to thrive." Churchill, writing ten years before Goldsmith devised his *Retaliation*, congratulated Warburton, Bishop of Gloucester, on giving up thoughts of the law.

"But you, my lord, renounced attorneyship  
With better purpose and more noble aim,  
And wisely played a more substantial game."

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<sup>1</sup> Hawkins' *Life of Johnson*, 2nd edition, p. 437.

The "game" of the Church, the revenue of a bishopric, were indeed "more substantial" than the poor allowances to the attorneys which escaped the taxing-master's censure. But Churchill seems to have judged the class less severely than his contemporaries, and even recognised that they might suffer injustice. He praised Judge Reason (and by implication denounced other judges) because she had not

"—basely to anticipate a cause,  
Compelled solicitors, no longer free,  
To show those briefs she had no right to see."

The anonymous author of the "Probationary Odes for the Laureateship" went further and was willing to allow to one attorney, not indeed virtue, but grammar. Among the persons represented as candidates for the laurel on the death of Whitehead was Sir Cecil Wray, Fox's opponent in the great Westminster Election of 1784. But though the words of the ode were stated to be by Sir Cecil, it was announced that "the spelling" was by Mr. Grojan, attorney-at-law. Mr. Grojan, a practitioner in Chancery Lane, was Deputy High Bailiff for Westminster; hence, doubtless, his association with the candidate, and his presence in the queer company which ranged from the Chancellor and the Archbishop of York to Michael Angelo Taylor and Dr. Pretyman. Mr. Pepper Arden, Attorney-General, too, was of the party and sang:—

*"Indite, my Muse, indite! supœna'd is thy lyre,  
The praises to record, which rules of Court require."*

But in revenge for the distinction allowed to Mr. Grojan, his official principal, the High Bailiff, from whom Fox recovered swinging damages for his conduct

in the scrutiny, is represented as unable to frame a sentence correctly.

With the beginning of the nineteenth century a more charitable view dawned upon mankind. Even in its worst days the profession must, somehow, have retained some respect, and now, bad as was its general character, there were exceptions admitted. To say that a man was an attorney was now only *prima facie* evidence that he was a villain; in the time of Dr. Johnson, as declared by the witticism of which he was pleased to be reminded, it had been conclusive proof.

When Crabbe with fear and trembling described the profession in *The Borough*, his principal example was, indeed, an unfavourable specimen; but there was a contrast afforded in honest Archer. Swallow was bad—"a hard bad man who prey'd upon the weak"—

"Lo! that small Office! there th' incautious guest  
Goes blindfold in, and that maintains the rest;  
There in his net th' observant spider lies,  
And peers about for fat intruding flies."

Swallow's villainies consisted in recovering a house from his father on behalf of a client, inciting clients to litigation, after giving them a generous dinner ("his way to starve them was to make them eat") and lending money on expectant interests. This last practice, not criminal in itself, led on to worse courses. With an hypocrisy doubtless natural in his profession, Swallow joined a chapel, became treasurer, and declined to part with the funds he received on the ground that, as some subscribers were dead, there was no one who could give him a valid discharge. And this sad course of conduct, the poet appeared to think, was the necessary consequence of legal training. The young attorney loses heart.

“Law, law alone, for ever kept in view,  
His measures guides and rules his conscience too.”

Since they live by law, they incite to litigation. When the client's fierceness abates “these artists blow the dying fire, and make the embers glow.” The process stops only when the client is exhausted.

But Crabbe admits exceptions. There were honourable men in the profession. These were the well-to-do,

“who hold manorial courts,  
Or whom the trust of powerful friends supports.”

An eighteenth-century poet could not have made such an admission as this; and the “Pope in worsted” went further still:—

“Yet, I repeat, there are who nobly strive,  
To keep the sense of moral worth alive;  
Men who would starve, ere meanly deign to live  
On what deception and chican'ry give;  
And these at length succeed; they have their strife,  
Their apprehensions, stops, and rubs in life;  
But honour, application, care and skill  
Shall bend opposing fortune to their will.  
Of such is Archer, he who keeps in awe,  
Contending parties by his threats of law:  
He, roughly honest, has been long a guide  
In Borough-business, on the conquering side;  
And seen so much of both sides, and so long,  
He thinks the bias of men's mind goes wrong:  
Thus, though he's friendly, he is still severe,  
Surly though kind, suspiciously sincere:  
So much he's seen of baseness in the mind,  
That, while a friend to man, he scorns mankind.”

Sixteen years later, when the second year of the century was beginning, this more favourable view of the attorney received confirmation from within the legal profession. Crabbe was a clergyman, and had

been an apothecary; an anonymous member of the bar came now to corroborate the other professions.<sup>1</sup> He pictures the opening of Term: —

“From Court to Court, perplexed, attornies fly,  
A Dowling each! quick scouring to and fro,  
And wishing he could cut himself in two,  
That he two places at a time might reach,  
So he could charge his ‘Six and eight pence each.’”

This is but natural weakness, and the author alludes to it, not in reprehension, but with the pride of superiority. As six-and-eight is to one, three, six, so is an attorney to a member of the bar. The author beholds the attorney again at the assizes, “bustling, hawk-eyed.” There the attorney may have the ill-luck to find Scarlett against him and receive “a roasting.”

“‘What!’ some old practised *limb* is apt to cry,  
When such a ‘roasting’ meets his curious eye,  
‘Can all this difference be betwixt a leader  
And an obliging, smiling, special pleader?’  
I well remember at no distant time,  
When Varro thought it neither sin nor crime,  
To greet a friend with language soft and kind,  
That won his patient client’s heart and mind.  
But now, behold! when by their friendly aid,  
His end is answered, and his fortune made,  
Up to the top of fame’s proud height he goes  
Then kicks the ladder down by which he rose!”

Not content with this exposition of his views in verse, the author added a note in prose. “There is an immeasurable distance between a Barrister and an Attorney; and many of the former have, or affect to have, an absolute antipathy to the latter.” He refers

<sup>1</sup> *The Bar: with Sketches of Eminent Judges, Barristers, &c., &c.* A Poem with Notes. London: 1826.



to Scarlett's habit of vituperating them, which on one occasion caused the leading case of *Hodgson v. Scarlett*, in which it was decided that no action will lie against Counsel for slander uttered in court. "One may collect at least three good reasons," continues the poet, "why Counsel should be more abstemious in their vituperation of these gentlemen: 1. They (the Barristers) are sure of the protection of the Court. 2. The abused party cannot reply to any observations, however strong that may be made, on his character or conduct. 3. Nor can he have any redress or satisfaction *out of Court*."

The barrister-poet usually, like Blackstone, bids an early farewell to his muse. While he is still among the singing birds, his practice is small, and he has reason to regard the attorney's as angelic visits. Mr. Justice Hayes, in his "Elegy written in the Temple Gardens," lamented the condition of the briefless in the upper storeys.

"The grave Attorney, knocking frequently,  
The bustling Clerk, who hastens to the door,  
The bulky brief, and corresponding fee,  
Are things unknown to all that lofty floor."

The same theme has inspired the pen of Mr. Horace Smith. He speaks the very language of the "obliging, smiling, special pleader."

"Ah! sweet attorney! I behold  
Thy brief so fat and fair;  
And on the back is marked the gold  
I long so much to share.  
Alas! why all thy favour pour  
On Robinson, Q.C.?  
Ah! deign to bless the second floor  
And bring thy briefs to me."

I hear thy step upon the stair !  
My heart beats as 'twould burst !  
Ah me ! how vain this foolish fear,  
Thou knockest at the first.  
Raise, raise thy lovely eyes once more,  
Then may'st thou haply see  
The name of Figgins on the door,  
And bring thy briefs to me."

It is, indeed, one of the common complaints against attorneys that they are unduly conservative and timorous in dispensing such patronage as they possess. They are blind to unpractised merit, slow to recognise worth in the new man. That theme must often have been sung. Mr. Smith himself (doubtless before he mounted the bench) gave us another variant of this opinion to the air of "Three Fishers went sailing."

"Three attorneys came sailing down Chancery Lane,  
Down Chancery Lane, ere the courts had sat,  
They thought of the leaders they ought to retain,  
But the Junior Bar, oh ! they thought not of that ;  
For serjeants get work and Q.C.'s too,  
And solicitors' sons-in-law frequently do,  
While the Junior Bar is moaning.

Three juniors sat up in Crown Office Row,  
In Crown Office Row, ere the courts had sat,  
They saw the solicitors passing below,  
And the briefs that were rolled up so tidy and fat ;  
For serjeants get work, &c.

Three briefs were delivered to Jones, Q.C.,  
To Jones, Q.C., ere the courts had sat,  
And the juniors weeping, and wringing their paws,  
Remarked that their business seemed uncommon flat ;  
For serjeants get work and Q.C.'s too,  
But as for the rest it's a regular 'do.'  
And the Junior Bar is moaning."

Here the attorney is not criticised, but wooed. While hope still lingers the junior barrister is not in a position to judge the attorney impartially, at least aloud. Mr. Haynes Bayly, the drawing-room darling, the popular singer of sixty years ago, suffered no such disadvantage. He had renounced attorneyship. He seems to have disliked intensely the study necessary for the profession of the law, and, indeed, he denounced the profession (though it was his father's, and doubtless supported *him*) very freely, in the person of John Quill. Why was Mr. Bayly so angry? Apparently because he himself had but narrowly escaped being one of us. Even then, from the son of a solicitor, one might have anticipated a more sympathetic criticism.

But the animus and flippancy of Butterfly Bayly were but survivals from the past. A more humane criticism was proper to the nineteenth century, and the attorney was no longer to be considered as a venomous insect, but admitted to belong to the vertebrates; and, finally, in 1865, he was definitely admitted within the human family. The honour of making this admission belongs to Mr. Cosmo Monkhouse, in his poem, "John Starkie, Solicitor."<sup>1</sup> In some two dozen verses John Starkie revealed his character, and the tragedy of his life—one leaf from the great human tragedy—just as a doctor, or an estate agent, or a poet, might have done. The poem is a picture of the solicitor, not as law agent, but as man of sentiment. John Starkie had loved, and loved in vain. She had wedded another, just as she often did in the fluent verse of Mr. Haynes Bayly; and, deeply disappointed, Mr. Starkie plunged

<sup>1</sup> *A Dream of Idleness* (1865).

into practice, and sought to bury his woe amid his papers. How little, he reflected, the world knows of a man's real character!

"If this of most be true, 'tis true,  
And doubly true of me,  
Whose roots are plunged down deep from view,  
Whose blossoms none may see.

A gnarlèd trunk, all seam'd and crost  
Of hard and knitted grain;  
Whose hopes were bitten by one frost,  
And never grew again.

Nor grew, nor died—the sap return'd  
And gathered in the roots;  
And though in Spring no more it burn'd  
Ambitious of green shoots,

Yet, east and west, and north and south,  
Refresh'd with rain and dew,  
The roots sent slender saplings forth,  
And none knew whence they grew.

How could they know? I blame not them;  
They judge by what they see;  
They only see the rough old stem,  
And this they take for me.

How can they tell how I have striv'd  
To keep my real life  
Pure as the life I would have lived  
If *she* had been my wife.

They think a lawyer thus must act,  
And thus he scarcely can;  
But they, methinks, forget the fact  
That he, like them, is Man.

The path the toiling foot may tread  
Shows not the spirit's goal,  
And work which earns the body's bread  
Need never stain the soul."

This (though not the end of Mr. Starkie's reflections) is the final crown of the work, the last stage of

the long evolution of opinion concerning the attorney. Not always is his nature subdued to what it works in, like the dyer's hand. The work which earns his body's bread need never stain the soul. The attorney, also, even he, like the critics, "is Man."

Here, then, the tale should have its ending. But the poets are like honest Verges—"a good old man, sir, he will be talking." And the true word having been spoken, Mr. Robert Buchanan found himself compelled to fall back upon the legend. Mr. Buchanan was "ever a fighter." He would have made pretty play with his cudgel in the old swashbuckling days; Grub Street would have resounded with his shouts of triumph and the howls of his victims. He costumes his solicitor in the style of the Adelphi, a "villain of halfpenny sheets."

"Sharp like a tyrant, timid like a slave,  
A little man, with yellow, bloodless cheek;  
A snappish mingling of the fool and knave,  
Resulting in the hybrid compound—Sneak."

It is not for the reader to contest Mr. Buchanan's criticism on his own creation; Mr. Thomas Sneak, the respectable solicitor, a man of principle, of means, of regular church-going habits, is not the most probable result of the union of a tramp with a "half tramp, half pedlar, and whole scamp." Yet such Mr. Buchanan declared his parentage. Mr. Sneak himself explained the position:—

"Put execution in on Mrs. Hart—  
If people will be careless, let them smart:  
Oh, hang her children! just the common cry!  
Am I to feed her family? Not I.  
I'm tender-hearted, but I dare be just,—  
I never go beyond the law, I trust;



I've work'd my way, plotted and starved and plann'd,  
Commenced without a penny in my hand,  
And never howl'd for help, or dealt in sham—  
No! I'm a man of principle, I am.  
What's that you say? Oh! *father* has been here?  
Of course you sent him packing? Dear, oh, dear!  
When one has work'd his weary way like me,  
To comfort and respectability,  
Can pay his bills and save a pound or two,  
And say his prayers on Sunday in a pew,  
Can look the laws of England in the face,  
'Tis hard, 'tis hard, 'tis shame and 'tis disgrace,  
That one's own father—old and worn and gray—  
Should be the only hindrance in his way.  
Swore, did he? very pretty! Threatened? Oh!  
Demanded money? You, of course, said 'No'?  
'Tis hard—my life will never be secure—  
He'll be my ruin some day, I am sure."

Mr. Sneak's pride in his profession is very pleasing. Not every one can feel his exultation in being on the roll—"the height on which I stand." But Mr. Sneak had, as he said, more than his fair share of trouble. A prodigal father is a severe trial. Mr. Sneak's mistake, in dealing with the problem, was his attempt to make his father a clerk. An old gentleman of wandering habits, given to potations, and in his cups excessively sentimental, if not maudlin, would upset the discipline of any office. The picture of the old man, fed and clothed by his son, and reproaching him for his baseness in prospering in the world, and especially for ingratitude, possesses a humour which Mr. Buchanan, perhaps, did not realise. Mr. Sneak, senior, was of the race which derided attorneys. Set down to copy documents, he preferred to use his son's foolscap to draw (*inter alia*, as his son would have said):—

"A shape in black, that kick'd and agonised,  
Strung by a pauper to a gallows great,  
And underneath it written, '*Tommie's Fate!*'"

So do the wits repeat their fancies, and Mr. Woty's crowning jest recurs unchanged after the lapse of a hundred years.

More in accord with modern feeling than this out-moded satire is the presentation of a professional man given by Sir W. S. Gilbert. Mr. Monkhouse first among poets admitted that the solicitor is a man; the Savoyard with penetrating insight goes deeper to the heart of things, and reveals him as a man of feeling and delicacy almost excessive in its refinement. Sir William Gilbert, indeed, refers many times to the profession. He first made known the solicitor of Ealing, who wedded a fairy; he refers in fitting terms to the fame of Ely Place; but nowhere has he drawn a more careful portrait than that of "Baines Carew, Gentleman":—

"Of all the good attorneys who  
 Have placed their names upon the roll,  
 But few could equal BAINES CAREW,  
 For tender-heartedness and soul.

Whene'er he heard a tale of woe  
 From Client A or Client B,  
 His grief would overcome him so,  
 He'd scarce have strength to take his fee.

It laid him up for many days,  
 When duty led him to distraint;  
 And serving writs, although it pays,  
 Gave him excruciating pain.

He made out costs, distrained for rent,  
 Foreclosed and sued, with moistened eye—  
 No bill of costs could represent  
 The value of such sympathy.

No charges can approximate  
 The worth of sympathy with woe;—  
 Although I think I ought to state  
 He did his best to make them so.

Of all the many clients, who  
Had mustered round his legal flag,  
No single client of the crew  
Was half so dear as CAPTAIN BAGG.

Now CAPTAIN BAGG had bowed him to  
A heavy matrimonial yoke ;  
His wifey had of faults a few—  
She never could resist a joke.

Her chaff at first he meekly bore,  
Till unendurable it grew.  
'To stop this persecution sore  
I will consult my friend CAREW.

'And when CAREW's advice I've got,  
Divorce *a mensâ* I shall try.'  
(A legal separation—not  
*A vinculo conjugii*).

'O BAINES CAREW, my woe I've kept  
A secret hitherto, you know ;'—  
(And BAINES CAREW, Esquire, he wept  
To hear that BAGG had any woe).

'My case, indeed, is passing sad,  
My wife—whom I considered true—  
With brutal conduct drives me mad.'  
'I am appalled,' said BAINES CAREW.

'What! sound the matrimonial knell  
Of worthy people such as these!  
Why was I an attorney? Well—  
Go on to the *sævitia*, please.'

'Domestic bliss has proved my bane,  
A harder case you never heard,  
My wife (in other matters sane)  
Pretends that I'm a Dicky Bird!

'She makes me sing, "Too-whit, too-wee!"  
And stand upon a rounded stick,  
And always introduces me  
To every one as "Pretty Dick!"'

‘ Oh dear,’ said weeping BAINES CAREW,  
 ‘ This is the direst case I know ’—  
 ‘ I’m grieved,’ said BAGG, ‘ at paining you—  
 To COBB and POLTERTHWAITE I’ll go.

‘ To COBB’s cold calculating ear  
 My gruesome sorrows I’ll impart,’—  
 ‘ No ; stop,’ said BAINES, ‘ I’ll dry my tear,  
 And steel my sympathetic heart !’

‘ She makes me perch upon a tree,  
 Rewarding me with “ Sweet—nice !”  
 And threatens to exhibit me  
 With four or five performing mice.’

‘ Restrain my tears I wish I could’  
 (Said BAINES), ‘ I don’t know what to do.’  
 Said CAPTAIN BAGG, ‘ You’re very good.’  
 ‘ Oh, not at all,’ said BAINES CAREW.

‘ She makes me fire a gun,’ said BAGG ;  
 ‘ And at a preconcerted word,  
 Climb up a ladder with a flag,  
 Like any street-performing bird.

‘ She places sugar in my way—  
 In public places calls me “ Sweet !”  
 She gives me groundsel every day,  
 And hard canary seed to eat.’

‘ Oh, woe ! oh, sad ! oh, dire to tell !’  
 (Said BAINES), ‘ Be good enough to stop.’  
 And senseless on the floor he fell  
 With unpremeditated flop.

Said CAPTAIN BAGG, ‘ Well, really I  
 Am grieved to think it pains you so,  
 I thank you for your sympathy ;  
 But hang it—come—I say, you know !’

But BAINES lay flat upon the floor,  
 Convulsed with sympathetic sob—  
 The Captain toddled off next door,  
 And gave the case to MR. COBB.”

Here, then, "the wheel has come full circle." Where the poets of a century ago saw mere greed and villainy, the modern seer describes a perfect exemplification of the generous qualities, carefully graduated from the delicate sensibility of Mr. Carew to the robust helpfulness of Mr. Cobb, and the unassuming but serviceable virtues of Mr. Polterthwaite. An anonymous singer has gone even further, and depicted the solicitor as not the oppressor, but (what, in fact, he often is) the victim of his clients—

"There was a young lady of Ci'cester,  
Who went to consult her solicitor,  
When he asked for his fee,  
She said 'Fiddle-de-dee,  
I only looked in as a visitor.'"

So the truth prevails, and at last the attorney's virtues are recognised. True this has happened only when Parliament is busy depriving him of his livelihood; but at least truth has prevailed, and doubtless, when the solicitor is extinct, there will be weaved a Six-and-eightpenny Garland for its fuller utterance.



## THE NOVELS OF THE LAW

THERE are three great novels of the law, or, at least, three principal novels, *Bleak House*, *Ten Thousand a Year*, and *Orley Farm*; and of these by common consent the first is the greatest.

It is Dickens who is especially the novelist of the law. His liking for legal matters, dating from the days when he occupied a stool at Messrs. Ellis and Blackmore's in Gray's Inn—or, perhaps, from the day when he left it—is obvious in many books from *Pickwick* to *Edwin Drood*. With the aid of the *Dickens Dictionary*, one is able to assert that the characters of his novels include as many as thirty-five lawyers, in addition to two law stationers, two law writers, and a law student. The trial in *Pickwick* is the most famous of all the trials of fiction. A dictum of the judge has been quoted with approval in a standard volume on evidence; a Solicitor-General lectured on the lawyers of the book. But *Bleak House* is the true lawyer's novel. The law inspires and directs the book from the marvellous opening chapter describing London in the fog, until at the close the great suit of Jarndyce *v.* Jarndyce at length "lapses and melts away." The atmosphere of a law court breathes throughout the book. All things centre round Lincoln's Inn. Mr. Gissing, who notes that the legal figures in Dickens are always admirable, declares that in *Bleak House* "London is seen as a mere dependence

of the Court of Chancery, a great gloomy city, webbed and meshed, as it were, by the spinings of a huge poisonous spider, sitting in the regions of Chancery Lane." Rarely can a novelist's art have risen to a higher level than in the chapter describing the regions of the law in vacation (chap. xix.), and that on "attorney and client" (chap. xxxix.) describing the scene in Mr. Vholes's office.

*Bleak House* was very popular on its appearance, the sale of the parts beating, as the author exultantly declared, by a round ten thousand or more "dear old *Copperfield*" itself; but the critics appear to rank it unduly low. Even Mr. Andrew Lang, a professed admirer of the author, does not include it among Dickens's best four books. John Forster thought little of it, and that because of its legal character. It suffered, he declared, by the very completeness with which its Chancery moral is worked out. "Attorneys of all possible grades," he says, "law clerks of every conceivable kind, the copyist, the law stationer . . . suitors of every description of the Chancery Court, and their victims, are for ever moving about the lives of the chief persons in the tale. The Guppys, Weevles, Snagsbys, Chadbands, Crooks, and Smallweeds," and, he unkindly adds, "even the Kenges, Vholeses, and Tulkinghorns are much too real to be pleasant, and the necessity becomes urgent for the reliefs and contrasts of a finer humanity. Mr. Balfour Browne, though he thinks the book one of Dickens's best and very characteristic of its author, declares that the plot is full of flaws and blunders. Mr. Lang thinks *Bleak House* one of the best-constructed of Dickens's stories. Mr. Chesterton says it is not one of Dickens's best books, but perhaps it is his best

novel. Mr. Brimley *contra* argued that Dickens had altogether discarded plot, and that the lawsuit was lugged in by the head and shoulders. But we have learned that plot, good or bad, counts for little in Dickens, and surely it is a very great novel, and infinitely superior to *Nicholas Nickleby*, which Mr. Lang puts among the author's best. Indeed, there must be many readers who place it second only to *Copperfield* itself. The book which gave us Mr. Vholes and Mr. Guppy, Mr. Chadband and Mr. Skimpole, Mrs. Jellaby and Inspector Bucket, could not but be a remarkable book. Mr. Tulkinghorn, of the Fields, it may be confessed, is not very convincing, but, as Mr. Lang generously admits, his conduct need not shake confidence in family solicitors. They are, as he says, too sagacious to imitate that model, and recognise that the best way of keeping a secret is not to know it.

A lawyer might, perhaps, desire to know a little more definitely what the suit of *Jarndyce v. Jarndyce*, that "monument of Chancery practice," was all about. There is a haziness, which Dickens might have found it difficult, and certainly would not have wished, to dispel, in the references to the suit, its object, its parties, its procedure. But one cannot deem this a fault. The picture is painted from the client's point of view, and no client ever admitted that he understood an administration suit. The book was an attack, not a description, "assaulting the Court of Chancery," Thackeray said, "in a manner I cannot conceive that ancient institution will survive." Thackeray under-estimated the ancient institution's tenacity as well as its usefulness. But perhaps the book suffers from the success with which it called for reform. The modern litigant,

whisked into Chancery on an originating summons, and whisked out again, breathless, ere he is a term older, can hardly suppose that the accounts of Chancery procedure in *Bleak House* were true. Perhaps Dickens did not realise that even with a perfect system of judicature litigation is vexation, and that it might still be well to follow the rule he himself adopted of suffering a great wrong rather than go to law. "I have that high opinion of the law," he wrote, "which one is likely to derive from the impression that it puts all honest men under the diabolical hoofs of all the scoundrels." Against the Chancery Courts—"those courts and the vermin they have called into existence"—he was especially ferocious, even in his private correspondence. When W. H. Wills called his attention to two cases in which apparently they had righted wrongs and punished scoundrels, he insisted that this was "nothing at all to the credit of Chancery . . . but everything to its discredit." For, he argued, if justice were cheap, sure, and speedy, there would be but few scoundrels. Here, the court had declared, were scoundrels: *ergo*, the court had failed in its duty. So that even the good deeds of Chancery demonstrated its iniquity.<sup>1</sup>

Very different was the treatment of legal matters in the story which appeared with immense popular success

<sup>1</sup> Dickens was not a good litigant; he had appealed to the Chancery Court in 1844 against piracies of his *Christmas Carol* and *Chuzzlewit*. "The pirates," he wrote in a moment of triumph, "are beaten flat. They are bruised, bloody, battered, smashed, squelched, and utterly undone. Knight Bruce would not hear Talfourd, but instantly gave judgment." The offenders apologised, and were ordered to pay all costs, but apparently were unable to do so, for the expense fell on Dickens. Two years later he declined to take steps to prevent further piracies. "I shall not easily forget the expense, and anxiety, and horrible injustice of the *Carol* case," he wrote, as though it were the fault of the Court of Chancery that the men who infringed his copyright were poor as well as peccant.



in *Blackwood* from 1839 to 1841, under the title of *Ten Thousand a Year*. Time has not dealt kindly with Samuel Warren, D.C.L., F.R.S.; stories of his egregious vanity are still current, but the stories he wrote appear to be unread. Oily Gammon and the Rev. Smirk Mudflint are no longer familiar allusions; Lord Dredlington and Mr. Gargle Glistler have to be sought for in the dictionaries of fiction. It is not easy to get through *Ten Thousand a Year*, no light task to struggle through the "three dense volumes" which contain Warren's *magnum opus*. For the pen which the author "dipped freely and deeply into satire" travels, as his preface confessed, "over a great space of ground, and deals with almost every class of society." The book was to be a picture of the whole round world of the English people. Warren had a long story to tell, but his great object—very imperfectly attained—was, he declared, "the *patient, close, and true* portraiture of *character and feeling*." Yet the plot was contrived with great care and was ingenious enough. Mr. Aubrey and his family, all persons of inestimable and perfectly unparalleled gifts in intelligence, beauty, wealth, position, and other virtues, lived at Yatton. ("How I do love those Aubreys!" wrote Warren to his publisher.) But there was a flaw in Mr. Aubrey's title to the property. His ancestor, it seemed, had failed to secure a conveyance necessary to perfect his right. This secret was known to a clerk who had served Mr. Aubrey's solicitor, and the clerk, in custody on a criminal charge and wanting funds for his defence, betrayed the story to attorneys of detestable and perfectly unparalleled greed and infamy—Messrs. Quirk, Gammon & Snap of Saffron Hill. After long search these persons discovered in Titmouse, a draper's



assistant, a contemptible creature, equally odious in poverty and wealth, the person who by descent was entitled to the Yatton estate. He brought an action of ejectment; John Doe and Richard Roe appeared, followed by conveyancers, special pleaders, and counsel, with numerous legal notes and explanations. Just before the trial, Mr. Aubrey's attorney discovered, misplaced in another bundle of deeds, the deed of confirmation, which had been duly obtained but forgotten, and was all that was needed to cure the defect of title. But when this deed was tendered in evidence an erasure was discovered in it, and the deed rejected—the law, as Warren contended, not then presuming, as it now does, that the erasure was made before execution. Titmouse proved his descent from the elder branch of the Dreddlington family and obtained a verdict. The Aubreys were plunged into poverty, the seat in Parliament resigned, the family home abandoned to Titmouse. But in the course of investigation Gammon had discovered that, though Titmouse's pedigree was apparently proved beyond doubt, his parents' marriage was in fact invalid, and he, therefore, was illegitimate and had no claim to the Aubrey estates. This secret Gammon, sharing the author's infatuation for Miss Aubrey, betrayed to her, and in due course virtue came to its own again, and a peerage, Quirk was struck off the rolls, and Gammon committed suicide so artistically as to defraud the company in which his life was insured.

The whole plot, therefore, depends on a series of lawsuits; crowds of legal personages cross the stage; there are constant discussions of legal matters, from proceedings before the justices to an election petition before a committee of the House of Commons. The

author cheerfully copies into his book a long letter, nearly all irrelevant, because it "affords a specimen of the way in which business is carried on between town and country solicitors." There are numerous pictures of legal life. Lord Brougham appears as Mr. Quick-silver; we have Lord Lyndhurst as Sir Charles Westenholme, Attorney-General, and afterwards Lord Chancellor, Mr. Subtle, K.C. (Scarlett, on a "muzzling brief"), and Mr. Sterling, leaders of the North-Eastern circuit; Mr. Tresayle, "a perfect miracle of real-property law-learning"; Mr. Mouldy Mortmain, and other eminent conveyancers, besides Mr. Bluster, Mr. Toady Hug, and their colleagues of the criminal bar.<sup>1</sup> In all twenty-one barristers play parts, large or small, in the book, in addition to practitioners in the Ecclesiastical Courts. Of attorneys there are fourteen, besides two clerks, two bar pupils, and sheriff's officers. The attorneys are mostly criminous. Except the excellent Mr. Parkinson and his admirable London agent, there is but one of whom anything good can be said or imagined. What could be hoped of Mr. Swindle Shark, Mr. Spitfire, Mr. Snout, or Messrs. Screw & Son? ("I hate his beastly names," said Alexander Blackwood in a letter to his brother.) Much ought to be excused to men who start life so handicapped.

There are many other portraits. The Marquis de Millefleurs stands for Count d'Orsay, and Mr. Venom Tuft is said to be a very unfair presentation of Abraham Hayward. "I don't know anything more delicious,"

<sup>1</sup> Mr. J. B. Atlay has pointed out others of "the striking portraits of the men who adorned the Northern Circuit in its heroic age": Lord Widdrington was Lord Tenterden, Sterling was Frederick Pollock, Mr. Crystal and Mr. Lynx were Creswell and Wightman, Mr. Justice Grayley was Bayley, J. The conveyancers seem not to have been identified.

said Thackeray in the *Book of Snobs*, "than the pictures of genteel life in *Ten Thousand a Year*." Other critics were not ironical and were equally laudatory. Lockhart (so Warren reported) declared that the book "beat Boz hollow." Sir Frederick Pollock, on the same authority, held that "a single page was worth all that Dickens had ever written." "Kettle and William Smith are in the greatest delight with what I have done." Thesiger thought it admirable, Pollock inimitable. But no one thought so highly of it as the author. Over every part he rejoiced; at a hint of criticism from the Blackwoods, he winced; at a suggestion of change or omission he cried aloud. The work was enormously successful, it could not be got at the libraries, though they cut the three volumes into six to make them go round; reading Warren's letters recounting its successes one expects to hear that (like an earlier article of his) it was translated into Cherokee.

Warren was still at the bar, and it was not his way to quarrel with the givers of briefs. His pictures of the attorneys must have helped to form the popular unfavourable opinion of the profession; but he anticipated and avoided criticism by pointing out that attorneys and solicitors (to whom he lectured on their "Moral, Social, and Professional Duties") were the object of unjust aspersions. "There will never be wanting those who will join in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity, or a proceeding which may or may not lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor.

"If the plaintiff succeeds he hates the defendant's attorney for putting him (the said plaintiff) to so much expense and causing him so much vexation and danger;

and when he comes to settle with his own attorney there is not a little heart-burning in looking at the bill, however reasonable.

"If the plaintiff fails, of course, it is through the ignorance and unskilfulness of his attorney or solicitor, and he hates almost equally his own and his opponent's solicitor.

"Precisely so is it with a successful or unsuccessful defendant."

If this apology be just, the lawyer has but to consider that his critic has been either plaintiff or defendant, and either successful or unsuccessful, and all is explained and the profession vindicated.

Thirteen years after the date of *Ten Thousand a Year* another attempt was made to give us a prose epic of the law in *Walter Hurst; or Early Struggles at the Bar*. The lawyer, here, was to be everything—or at least everything but noble sentiments with the cardinal virtues in capital letters; from cover to cover the young lawyer's career was to be the theme. From office boy in an attorney's office to an eminent and venerated member of the bench, his whole course of life was to be made plain. Who the author, "Herbert Greville Pelham" was, does not appear; his name was not in the Law Lists of his day; it is not even in the *Dictionary of National Biography*. The British Museum Catalogue has no other entry against him. Probably the name was an undetected pseudonym.<sup>1</sup>

<sup>1</sup> My own guess is Mr. Samuel Warren. It is true Messrs. Routledge, who published the book, have no reason to believe him the author. But Warren was a Master in Lunacy when the book appeared, and would not have cared to appear again as a novelist, and finding the old delight in writing in the leisure he enjoyed as an official, he might well have taken refuge in a pseudonym. *Ten Thousand a Year* and *Walter Hurst* are alike in many ways; in the names of the characters, the betrayal of a client's secret by a solicitor's clerk as an important



*Walter Hurst* never reached a second edition ; a search of the second-hand bookstalls would not disclose many copies of the first.

It is not a bad book—for lawyers interested in the history of their trade. There are accounts of lawsuits, attractive enough to professional men ; there are details of the lawyer's life in the fifties, when the book was published, or at the end of the preceding century, which is the period of the story. We learn that lawyers' clerks then went home to midday dinner, that they stayed at the office till eight at night. Consultations with counsel were held at half-past eight. In one case five counsel were engaged for the defendant, and "the brief was so very voluminous, it was known the Attorney-General and the two senior counsel would find it almost impossible to go over the contents." We learn that leaders never look at their briefs "if they can possibly help it, until the moment for consultation arrives, and then will always snub a junior who wishes to impart the information he has gained by a careful investigation of the facts. This is almost always the case with an ill-bred and vulgar man, who is lionised in his profession ; and it is a pretty sure proof he is no gentleman, and no Solomon."

We have a picture of Mr. Fairtwister, the busy Special Pleader to whom Walter goes as pupil. In the parody of Browning the pleader says—

"Now you're my pupil !

On the good ancient plan I shall do what I can

For *your* hundred guineas to give *my* law's blue pill."

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incident, the reverence displayed for an Attorney-General, the delight in describing details of procedure. If the author was not Warren, he was a singularly close imitator of him.



Mr. Fairtwister had no such purpose. He was much too busy to administer the blue pill, but set his pupils, packed in a room by themselves, to copy out whichever precedent he might indicate. Special pleading was the worst evil the author saw in our judicial system.

The author was very jealous of the honour of the bar: but he recognised that there were all sorts of men members. If there were honourable gentlemen like Sir Frederick Ingerdess, the Attorney-General, Mr. Courtly, K.C., and Mr. Clinch, K.C., the leaders on the Western Circuit, there were others who were detestable, such as Mr. Barleymouth, K.C., Mr. Soapy of the Somerset Sessions, who liked Walter Hurst as long as he seemed certain not to get any business, Mr. Slimy, who almost snatched a judgment by intentionally misreading the vital part of a deed, Mr. Flippant Addlepat Snake, who was merely silly and rude, Mr. Gloazy, who sang indecent songs at the mess. And there were many indifferent, Mr. Presshard the prosecutor, Mr. Blackstone, Mr. Careless, Mr. Serjeant Fightall. There were cliques too, jealous and exclusive and incompetent. Barristers unknown and without experience indulged hopes of business, "as if attorneys were like green and sickly maidens and fell in love with an advocate at first sight." Indeed, in those pre-examination days the author saw sufficient need for reform at the bar. Good old customs were dying out. Men no longer lived in their chambers in the Temple. It had been said, though it was almost incredible, that men had dined in hall "as dandyfied as tailors' clerks with moustached lips." A specimen of such a creature should be caught and exhibited to the public as "the Great Hairy Spouter." Then no

study was required from a barrister. "So long as a student keeps his commons, as it is termed—that is, stuffs his bowels full of beef and pudding, and pays his dues—he is eligible to the ranks of the bar." If Walter Hurst "had been about to be made chief clerk to a butcher or writing assistant in a barber's establishment, greater caution would have been observed and more inquiries made as to his capabilities and education." The Benchers neglected their duties. Hence "we have known instances where advocates have been guilty of the most dishonourable and dishonest conduct, who have never received even a reprimand from the Inns of which they have been members."

If this was the condition of the upper branch of the profession it was not surprising to find black sheep in the lower. There were plenty, some anonymous, some like Mr. Sneak, important characters. He and Walter Hurst were together managing clerks; Hurst chose the upward, Sneak the downward path. Starting by betraying a professional secret which ruined his employer's client, and made him rich, he proceeded to forge wills freely, compassed the death of a dangerous client, and died in Newgate of fright. There were Messrs. Fligg and Bluster, whom he joined in partnership. There was Mr. Sligger, who, "notwithstanding the excellent and moral education he had received, abandoned the honourable walk of his profession and delighted only in those cases in which no respectable man would be engaged." On the other hand, there was the excellent Mr. Trustful, of Taunton, represented in London by the great agency house of Garnish, Graball & Hold. There was Mr. Holdfast, the avenger of the wronged; and, most especially, the good man of the story, Mr. Wallace. Perhaps the lower

branch could claim only partial credit for this honourable, upright, and generous person ; for he had in his youth received a very finished education, *having been intended for the bar.*

Through a crowded panorama of these and others, supervised by judges of all sorts, competent and incompetent, upright and partial, courteous and insulting, Walter Hurst pursues his path. He was a foundling or nurse-child. Through most of the book, we are told to look forward to the unravelling of the mystery of his birth, but at last the sole repository of the secret is killed and the mystery remains unsolved. This seems a short and ready way for an author in difficulties with his plot. The hero runs away from a forced apprenticeship, drifts to London, becomes an office boy, a clerk, has his articles given him, aspires to the greater glory of the bar, is called, starts badly, loses his friend, is almost starving, passes four or five depressing years — subsisting for a while on some bank notes found in the lining of a dirty sofa bought second-hand—gets his chance, makes rapid progress by his learning, his extraordinary skill in advocacy, his eloquence, enters Parliament, bewitches the House, upsets the Government, is Attorney-General, judge—

“The gates are passed and heaven is won.”

It is a bar-student's midsummer night's dream.

Walter Hurst's first case, however, brought him no glory ; at consultation he made a suggestion which his leader quite rightly brushed aside, and when the trial came the plaintiff was non-suited before he could realise what was happening. In his second he allowed himself to be defeated by so ridiculous a technical

objection that he felt bound to pay the costs of his unfortunate client. When he essayed to answer the objection "he looked towards the Bench and his sight became confused. It seemed to him he was gazing on some fiery pedestal, on which was placed a bag of wool, from a hole in which a monkey was peering at him with little malicious eyes which twinkled with the most sinister expression." The author apostrophises his reader thus: "Reader, if you have sons and care for their happiness, and you have neither a large fortune or legal connection to help them on, make them breakers of stone, or climbers of chimneys, or anything of the sort, rather than dream of sending them to the bar."

We are favoured with many specimens of Mr. Hurst's oratory; the learned gentleman's style was at once formal and luscious, and he was ever a speech-maker. On the last page he makes a speech from his death-bed to a jury of his descendants, a speech full of moral sentiments of the utmost propriety. Then "there was a pause. Each stood listening with a rapt attention, to catch every word that should fall. All were afraid to move. Presently they observed his lips to open, but no words came; and the lower jaw fell."<sup>1</sup> There is a love interest, of course; an honourable attachment to Miss Amy Sinclair, and one less honourable. Walter Hurst's fall cost him dear. But the other affair ended happily. "Flying to meet her, before she was aware of the action, he had folded her in his arms, and whispering in the tenderest accents of love, 'My beloved Amy!' had printed a kiss on her pouting lips that thrilled her with an ecstasy of plea-

<sup>1</sup> Compare the death of the Earl of Dreddlington in *Ten Thousand a Year*; "the lower jaw also fell. The poor Earl was dead."



sure she had never before experienced." Worse books than *Walter Hurst* have had more readers.

Cardinal Newman's favourite novelist is said to have been Anthony Trollope, and of all his many volumes the favourite was *Orley Farm*. The eyes tired of straining after the invisible doubtless found it a relief to gaze on the homely landscape Trollope drew, the meadows and hedgerows which share the flatness said to be his foible. Even the clergy of Trollope's books are not very spiritually minded; the lawyers are still more worldly. Mr. Furnival, the most distinguished of them—Mr. Furnival, K.C., M.P., a leader of the Common Law Bar—had won admiration from Trollope in his younger days, the happy days in Keppel Street, when he was reporting, writing, working hard for scant pay. "There is no human bliss equal to twelve hours of work with only six hours in which to do it." But Mr. Furnival grown older and prosperous, must have a blue nose and a bad temper, and be suspected (quite unjustly, as Trollope showed) of running after strange goddesses. Moreover, he was declared to be radically dishonest in defending a person of whose innocence he was not certain. Mr. Chaffanbrass, too, of the Old Bailey, who had appeared in *The Three Clerks* before *Orley Farm*, and was to reappear in *The Eustace Diamonds* and *Phineas Redux*, presented the bar in an evil light.

"In person, Mr. Chaffanbrass is a little man and a very dirty little man. He has all manner of nasty tricks about him, which make him a disagreeable neighbour to barristers sitting near him. He is profuse with snuff, and very generous with his handkerchief. He is always at work upon his teeth, which do not do much credit to his industry. His wig is never



at ease upon his head, but is poked by him, sometimes over one ear, sometimes over the other, now on the back of his head, and then on his nose; and it is impossible to say in which guise he looks most cruel, most sharp, and most intolerable. His linen is never clean, his hands never washed, and his clothes apparently never new. He is about five feet six in height, and even with that stoops greatly. His custom is to lean forward, resting with both hands on the sort of desk before him, and then to fix his small brown basilisk eye on the victim in the box before him. In this position he will remain unmoved by the hour together, unless the elevation and fall of his thick eyebrows and the partial closing of his wicked eyes can be called motion. But his tongue! that moves; there is the weapon which he knows how to use!"

The solicitors, though Trollope loves them not, fare a little better. Messrs. Round & Crook of Bedford Row are unexceptionable persons, if Mr. Dockwrath of Hamworth (declared, without apparent cause, the most dishonest of the lot), was ungrateful and ill-tempered, and pushed business further than professional etiquette approved. Even Mr. Solomon Aram of Bucklersbury, instructed for the defence, is not unkindly treated. "When one knew that he was a Jew, one saw that he was a Jew; but in the absence of such previous knowledge he might have been taken for as good a Christian as any other attorney." We who wince must acknowledge the neatness of the gibe.

But against both branches Trollope had a grudge. They were concerned, he said, not to ascertain the truth, but to win the case for their clients! He could not understand how a lawyer could honourably advo-

cate a cause of whose truth he was not certain. Surely so able a man never so misunderstood the nature of advocacy. That a man unpractised in speech, unskilled in law, should have the aid of one possessing skill and power of speech, but professing no personal knowledge or belief of the matters in question; that he should be able by his counsel to say all that he could say himself, given the necessary skill: this seems simple and even elementary justice. Trollope would not admit this. He says a prisoner should have no protection "as a guilty man; none which may tend towards the concealing of his guilt. Till that be ascertained, proclaimed, and made apparent, every man's hand should be against him. . . . For the protection of his innocence, let astute and good men work their best, but for concealing of his guilt let no astute or good man work at all. . . . Let the poor victim . . . have his defender, the defender of his possible innocence, not the protector of his possible guilt. It all resolves itself into this. Let every lawyer go into court with a mind resolved to make conspicuous to the light of day that which seems to him to be the truth. A lawyer who does not do that—who does the reverse of that—has in my mind undertaken work which is unfit for a gentleman and impossible for an honest man."

Clearly the Civil Service develops sensitiveness of conscience, at least as to other people's business. Dr. Johnson had discussed the matter with his usual triumphant common-sense a hundred years earlier. "And what do you think," asked Boswell, "of supporting a cause which you know to be bad?" "Sir," replied the moralist, "you do not know it to be good or bad till the judge determines it. I have said that

you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why, then, Sir, you are wrong and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion." Mr. Furnival did not *know*, though he may have suspected, that his client—whose evidence had been believed by everybody, when it was given twenty years earlier—had committed perjury. To have accepted her brief, to have taken fees from her, and because of a suspicion very likely to be unfounded, to have gone into court, not to defend her, but to ascertain, proclaim, and make apparent her "possible guilt" would, indeed, have been conduct "unfit for a gentleman and impossible for an honest man."

Mr. Furnival's client, Lady Mason, was in effect charged with forging a codicil to her husband's will, by which Orley Farm was left to her son. Like Warren's book, *Orley Farm* is concerned in a dispute as to title to an estate, though an estate less magnificent than Yatton, between people less tremendously virtuous than the Aubreys. Indeed they are scarcely virtuous at all; for Lady Mason, though the reader likes her, had in fact forged the codicil—in circumstances of great temptation, as Trollope explains; while Mr. Mason, on the other side, though moderately honest, was rancorous, envious, mean, and what in fiction is worse, unsympathetic to the reader. But

the characters, if not virtuous, are very possible. Trollope's strength and weakness are shown in the probability of his fable; everything he tells might have happened without surprising—though it would not be fair to add without interesting—any one. Like the other legal novels *Orley Farm* is very long. It falls short by much of the half-million of words which Warren required to tell his tale, and is not actually so long as *Bleak House*. But it is very long, and when his friends told the author this was his best book, he differed from them and confessed, putting his finger on the weak spot, that though he thought the plot good, the secret was declared too soon. But this notwithstanding, Trollope had a delightfully high opinion of the book. The one thing common to the three novels of the law is the pleasure which their authors had in writing them. "Independently of this the novel is good," he says. "Sir Peregrine Orme, his grandson, Madeline Stanley, Mr. Furnival, Mr. Chaffanbrass, and the commercial gentlemen are all good. The hunting is good. The lawyer's talk is good. Mr. Moulder carves his turkey admirably, and Mr. Kantwise sells his tables and chairs with spirit. I do not know that there is a dull page in the book."

At least there are many very entertaining ones. The scenes in which Mr. Dockwrath defends his position in the Commercial Room, and receives a visit from Lucius Mason, the cross-examinations, the chapter in which Lady Mason confesses the truth to her old suitor, and many others, are very admirably done. The book deserves as little as any of Trollope's the partial eclipse which has fallen upon his fame. If a rose by any other name would smell as sweet, the author said, he would have called his story "The Great Orley Farm



Case." Though there is relief provided by the hunting and the turkey-carving, and some conscientious love-making, the interest is legal throughout. We see not only attorneys in their offices and counsel in their chambers, but a judge in his country house. To the man who had reported the private, even the midnight, conversations of a bishop and his wife, nothing, of course, was sacred. The judges and the Solicitor-General are treated with respect, however; perhaps to add severity to the criticisms on the rest of the profession. Cross-examination, so generally esteemed an effective means of ascertaining the truth, met with such condemnation from Trollope that one suspects a painful personal experience may have coloured his views of legal procedure. "Evidence by means of torture, thumb-screws and such like," he says, "we have for many years abandoned as barbarous, and have acknowledged that it is of its very nature useless in the search after truth. How long will it be before we shall recognise that the other kind of torture is equally opposed both to truth and civilisation."

Indeed, he makes a noble appeal for better treatment of witnesses. "The judge there had his ermine and his canopy, his large salary and his seat of honour. And the lawyers had their wigs, and their own loud voices, and their places of precedence. The attorneys had their seats and their big tables, and the somewhat familiar respect of the tipstaves. The jury, though not much to be envied, were addressed with respect and flattery, had their honourable seats, and were invariably at least called gentlemen. But why should there be no seat of honour for the witnesses? To stand in a box, to be bawled after by the police, to be scowled at and scolded by the judge, to be browbeaten



and accused falsely by the barristers, and then to be condemned as perjurers by the jury—that is the fate of the one person who during the whole trial is perhaps entitled to the greatest respect, and is certainly entitled to the most public gratitude. Let the witness have a big armchair, and a canopy over him, and a man behind him with a red cloak to do him honour and keep the flies off; let him be gently invited to come forward from some inner room where he can sit before a fire. Then he will be able to speak out, making himself heard without scolding, and will perhaps be able to make a fair fight with the cocks who can crow so loudly on their own dunghills.”

Authors, too, it may be remarked, have their own, more select, points of vantage, whence they can speak loudly to a grateful world. In the end Trollope relented a little, marrying the judge's daughter to a member of the contemned profession, though one with eccentric views of professional duty. And though the colonies and the County Courts are, Lady Stanley declared, the places to which clever young barristers go who marry before they have made their way, he declined to send Madeline Stanley and her husband to Patagonia or Merthyr Tydvil. Doubtless he destined his hero for a professorship.

It was from a very different point of view that Sir Walter Besant wrote his legal novel, a point inside the profession, and even the lower branch of the profession; and he wrote with a kindliness to its members that would have surprised, and perhaps annoyed, the author of *Orley Farm*. One meets in *The Ivory Gate* no member of the bar save one briefless and almost destitute; amongst the solicitors and solicitors' clerks there is no rogue. In one sense Besant's main idea was not

original, for his book seems founded on the old sneer that it is a misfortune to have a mad solicitor, since no one could find it out; for how would you tell the difference? But in the kind of madness he was quite new, even if Dr. Jekyll had preceded Mr. Dering in the manner of transition. In his sane hours Mr. Edward Dering of Lincoln's Inn possessed "the set expression, the closed lips, the keen eyes, and habitual look of caution and watchfulness which become the characteristics of a solicitor in good practice." At those times he was a Conservative; not from prejudice or professional habit, but from a reasoned and intelligent appreciation of the value of Property as a means of human progress. But when, unknown to himself, he passed through a strange seizure to another consciousness, and became Edmund Gray (with a room in Gray's Inn), the lines of his face relaxed, he wore his frock-coat unbuttoned, he was an ardent Socialist, and an especially vehement opponent of all Property. Unknown to Mr. Dering, Mr. Gray "ran" a small lecture-hall in Somers Town, and there every Sunday gave tea to a small gathering, and then lectured on the evils, the danger, the decay, the abolition of Property. Next day Mr. Dering would forget how he had passed the previous afternoon; lunch he remembered, lunch at his club, but after?—probably he had gone to sleep. So he spent many hours at the Ivory Gate, before which the poets and artists and dreamers of the world lie all enraptured, dreaming beautiful dreams; dreaming, for his part, of what the world will be when Property has passed away. It was an odd habit for a solicitor, and would have shocked him had he been conscious of it in his legal moments. Then he considered (truly, no doubt, though the world is unaware

of it) that the solicitor "is always engaged in considering how best to guide his fellow-man through the labyrinthine world. He receives his fellow-man at his entrance into life as a ward; he receives him grown up as a client: he advises him all his life at every step and in every emergency. If the client goes into partnership, or marries, or buys a house, or builds one, or gets into trouble, the solicitor advises and assists him. When the client grows old, the solicitor makes his will. When the client dies, the solicitor becomes his executor and his trustee, and administers his estate for him. It is thus a life . . . entirely spent for other people. I know not of any other, unless it be medicine, that so much can be said. And think what terrors, what anxieties, what disappointments, the solicitor witnesses and alleviates! Think of the family scandals he hushes up and keeps secret! Good heavens! if a solicitor in large practice were to tell what he knows, think of the terrible disclosures. He knows everything. He knows more than a Roman Catholic priest, because his penitents not only reveal their own sins, but also those of their wives and sons and friends and partners."

When Mr. Dering finds that some one (himself, of course) has forged cheques in his name payable to Edmund Gray, that forged transfers have enabled some thirty thousand pounds worth of his stocks and shares to be made over to Edmund Gray, that no one can find Edmund Gray, yet that he, Edward Dering, has given references for him, whom he does not know and never heard of, to landlords and bankers: then he feels in the presence of a problem such as the firm of Dering & Son, now in its third generation, has never before confronted.

And even to Sir Walter's kindly eyes, solicitors with an income of ten thousand a year—Warren's figures repeated unconsciously, no doubt—were rare. Indeed, he saw quite well the limitation of professional prospects, prospects which, as George Austin, one of Mr. Dering's managing clerks, declared, become darker every day. "They keep on crowding into the profession," he declared to his sweetheart, "by multitudes, as if there was room for any number. They don't understand that what with the decay of the landed interest and of the country towns, and the cutting down of the costs and the work that goes to accountants, there isn't half the business to do that there was. There don't seem any partnerships to be had for love or money, because the few people who have got a good thing have got no more than enough for themselves. It is no use for the young fellows to start by themselves; so they have got to take whatever they can get, and they are glad enough to get even a hundred a year to begin with—and I am seven-and-twenty, Elsie, and I'm drawing two hundred pounds a year."

Fortune had great things in store for George Austin, but he made no claim to being intellectual, and as he spoke of obtaining a garnishee order *pendente lite*, even his professional reading may have been limited; he was "only an excellent person," but his Araminta had not said No, and he was one of those who "always set before themselves," so Sir Walter declared, "and keep always well in sight the ideal suburban villa and the wife . . . they always hope to secure an income which will enable them to maintain that wife—with a possible following of babies—in silk attire (for Sundays); in ease as to household allowance; and in such freedom



of general expenditure as may enable her to stand up among her neighbours in church without a blush."

It is no doubt a humble, but not a bad, ideal, a scheme of life which might save painful professional scandals. "A certain staid and settled manner of living" was prescribed by the author of *The Compleat Solicitor* nearly two and a half centuries since. But it is not as exponents of such precepts that the world pictures its lawyers. *The Ivory Gate*, Mr. Dering and Mr. George Austin, it is to be feared, did not interest readers so much as they deserved; and it is not of them, but of Jarndyce v. Jarndyce, of Oily Gammon and Mr. Pell, Mr. Vholes and Mr. Dockwrath that people think; of the law's delay and its practitioners' rascality that they make their mental picture.

True or untrue, these things are written for our instruction. The law student will learn in these novels as much of the history of the law as he will consent to acquire until legal history is made an examination subject. The solicitor just admitted, the freshly-called barrister, swelling with the pride of recent knowledge, may think the Chancery proceedings of *Bleak House* incomprehensible, may note that Warren's law proved to be bad, and may wonder why Lady Mason could not, after her confession, have been indicted for forgery. But they, and indeed lawyers of all ages, may read with profit how the profession seems to the eyes of others and may learn some law, and what is more valuable, some knowledge of men and manners from these books. "Close thy Blackstone, open thy Thackeray," said the sage.



## THE ATTORNEY IN FICTION

A STATISTICAL Inquiry into Heroes, such as Mr. Barrie instituted concerning heroines in his light-hearted early days of authorship, would not disclose many lawyers among the popular favourites. Soldiers, of course, come first; the man of action is the man of whom we like to read. Author-heroes are frequent, and curates have a certain popularity. Doctors, on the other hand, are not well treated by the novelists. Doubtless, like all professional men, they suffer from the obvious disadvantage of being too busy. Your hero must be at leisure to woo. A man who is in his office from nine till six can give but scraps and ends of time to the hero's main duty. Anthony Trollope said of his Phineas Finn that readers could not be expected to care greatly for a hero who spent so much of his time in the House of Commons. In his essay on "Romantic Professions," Mr. W. P. James points out that the schoolmaster generally plays an invidious part; and he proceeds to deal with the divided fortunes of the legal profession. For it is necessary at once to distinguish the lofty position and distinguished prospects of the bar from the very different station of the attorney, declared long ago to be of an "inferior and ministerial" and even of an "immaterial nature." The bar opens the door to all careers, says the French proverb; but attorneys have always been, like Lucy, those whom there are none to

praise, and very few to love. "The barrister," says Mr. James, "is a not uncommon hero. Is it the wig and robes, or the prospect (precarious, as Eugene Wrayburn's boy hinted to Mr. Boffin) of ending in the House of Peers?"

"It is one of the grievances of what is invidiously called the lower branch of the legal profession," he continues, "that while the briefless barrister is accepted for hero, the attorney is more commonly the villain of the piece. The attorney's record is so bad in fiction, that it would be little better than a bit of bravado to attempt to impose him as hero on a prejudiced public. I do not know whether the task has been attempted even by the modern realist, with all his love for the unlovely things of life. It would be highly diverting, though hardly fair to a learned and honourable profession, to institute a sort of tug-of-war between the virtuous and vicious attorneys of fiction, the types of Glossin and Messrs. Dodson and Fogg do so painfully prevail. It adds a deeper discredit to Philip Wakem's deformity that he had in him an attorney's blood. If a lawyer be not astute he is naught, and astuteness is a quality that is neither honoured, loved, nor trusted. . . . The public has got it into its head that the attorney cannot lose the lawyer in the lover, but will, like the young man by the name of Guppy, file a declaration instead of making a proposal, and write his love letters without prejudice." It can be shown that Mr. James has underrated the novelists' courage, and that one or two solicitor-heroes exist, though not, perhaps, that the public liked those heroes better because of their vocation. And as a character of less importance than the hero, the lawyer has appeared constantly throughout the history of fiction.

The first novelist who introduced attorneys in novels was a member of the bar, and it might have been expected that he would not deal very tenderly with the lower branch. But, in fact, Fielding was more severe upon the Justices of the Peace than upon the advocates who appeared before them. The evil most reprobated in his time was the number of unqualified practitioners. "This Scout," Fielding said, "was one of the fellows who, without any knowledge of the law, or being bred to it, take upon them, in defiance of an Act of Parliament, to act as lawyers in the country, and are so called. They are the pests of society, and a scandal to a profession to which, indeed, they do not belong, and which owes to such kind of rascallions the ill-will weak persons bear towards it." Dowling, the attorney in *Tom Jones*, is introduced in the company of another of these unqualified gentry, "a most vile pettifogger, without sense or knowledge of any kind." Dowling was not without sense, or business; he wished he could cut himself in twenty pieces, and be in twenty places, so that he might attend to all his work. The position of attorney was not apparently a lofty one in the social scale; Dowling took his meals in Mr. Allworthy's kitchen; he knew no Latin, and "endeavoured by winking, nodding, and sneering to hide the impression from Jones." But Fielding had a kindness for Dowling. "Mr. Dowling," we are told, "was indeed very greatly affected by this relation; for he had not divested himself of humanity in being an attorney. Indeed nothing is more unjust than to carry our prejudices against a profession into private life, and to borrow our idea of a man from our opinion of his calling. Habit, it is true, lessens the horror of those actions which the profession makes

necessary and consequently habitual; but in all other instances Nature works in men of all professions alike; nay, perhaps, even more strongly with those who give her, as it were, a holiday when they are following their ordinary business. . . . An attorney may feel all the miseries and distresses of his fellow-creatures provided he happens not to be concerned against them."

But it has to be admitted that Dowling was something of a rascal. Entrusted with a letter and message from Jones's mother declaring that foundling's parentage, he found Mr. Allworthy too ill to receive them, and by the Squire's direction delivered both to Blifil. He subsequently received assurances from that gentleman that the communications had been delivered. He was not imposed upon by these statements; but in view of promised preferment he was content to seem to be. And it was only when he saw Blifil's fortunes no longer likely to afford the means of compliance, that, in answer to Mr. Allworthy, he again delivered the message and established the amiable foundling's position.

Smollett was not a kindly disposed person, and as he did not spare his own profession one could hardly expect the law to escape uncensured. It is to Smollett's *Ferdinand, Count Fathom*, we owe that anonymous but often-quoted attorney who charged his client for three hundred and fifty attendances. The client "found he had incurred the penalty of three shillings and fourpence for every time he chanced to meet the conscientious attorney, either in the park, the coffee-house, or the street, provided they had exchanged the common salutation; and he had good reason to believe the solicitor had often thrown himself in his way, with a view to swell this item of his account." It is not so



well remembered that Count Fathom paid the bill but "with one stroke" (of the poker) "opened a deep trench upon the attorney's skull, that extended from the hind head almost to the upper part of the nose." Thus did gentlemen in the days of the early Georges treat the rascal pettifogger who practised the law. The surgeon took a serious view of the case, but Count Fathom declared, "I am not so unacquainted with the resistance of an attorney's skull as to believe the chastisement I have bestowed upon him will at all endanger his life, which is in much greater danger from the hands of the common executioner."

To Smollett we owe also the full-length and not unpleasing portrait of another attorney, Tom Clarke. It is that gentleman's misfortune that he appears in one of Smollett's least successful books, an imitation of *Don Quixote* with the title of *Sir Launcelot Greaves*. "Tom Clarke," we learn, "was a young fellow whose goodness of heart even the exercise of his profession had not been able to corrupt. Before strangers he never owned himself an attorney without blushing, though he had no reason to blush for his own practice, for he constantly refused to engage in the cause of any client whose character was equivocal, and was never known to act with such industry as when concerned for the widow and orphan, or any other object that sued *in forma pauperis*. Indeed he was so replete with human kindness, that as often as an affecting story or circumstance was told in his hearing, it overflowed in his eyes. Being of a warm complexion, he was very susceptible of passion, and somewhat libertine in his amours. In other respects he piqued himself on understanding the practice of the courts, but in private company he took pleasure in laying down the law ;



but he was an indifferent orator and tediously circumstantial in his explanations. His stature was rather diminutive, but, upon the whole, he had some title to the character of a pretty, dapper, little fellow. If no orator, Mr. Clarke was a fluent conversationalist on matters of his calling:—

“ ‘Give me leave, Sir,’ replied Tom. . . . ‘Now you know that in the case of a contingent *remainder*, the entail may be destroyed by levying a fine, and suffering a recovery, or otherwise destroying the particular estate, before the contingency happens. If *feoffees* who possess an estate only during the life of a son, where divers *remainders* are limited over, make a *feoffment* in fee to him, by the *feoffment* all the future *remainders* are destroyed. Indeed a person in *remainder* may have writ of intrusion, if any do intrude after the death of a tenant for life and the writ *ex gravi querela* lies to execute a devise in *remainder* after the death of a tenant in tail without issue.’ . . . ‘Perhaps,’ said Tom, ‘I do not make myself understood; if so be as how that is the case, let us change the position and suppose that this here case is a tail *after a possibility of issue extinct*. If a tenant in tail after a possibility make a *feoffment* of his land he in reversion may enter for the forfeiture. Then we must make a distinction between *general tail* and *special tail*. It is the word *body* that makes the *intail*: there must be a *body* in the *tail*, devised to heirs male or female, otherwise it is a fee-simple, because it is not limited of what *body*. Thus a corporation cannot be seized in *tail*. For example, here is a young woman—What is your name, my dear?’ ‘Dolly,’ answered the daughter with a curtsy. ‘Here’s Dolly—I seize Dolly *in tail*. Dolly, I seize you *in tail*.’ ‘Sha’t then,’ cried Dolly, pout-

ing. 'I am seized of land *in fee*—I settle on Dolly *in tail*.' To which Dolly replied, 'Sha't then, I tell thee, cursed tuoad ! ' "

When Mr. Clarke meets a brother practitioner their conversation becomes so technical that the reader may skip uncensured. Against Mr. Clarke's professional brethren the chief complaint Smollett brought was that they stirred up litigation and brought frivolous suits, and these, in pre-County Court days, were, of course, in the courts at Westminster. But Smollett, though he reprobated such conduct in the lawyer, found it admirable in his hero. One of the good deeds of Sir Launcelot was his punishment of an avaricious lawyer. He exposed him to the grand jury, and "also, being vested with the property of the great tithe, proved such a troublesome neighbour, sometimes by making waste among his hay and corn, sometimes by instituting suits against him for petty trespasses, that he was fairly obliged to quit his habitation and remove into another part of the kingdom."

In the early days of our prose fiction, then, the lawyer makes a sufficiently prominent appearance. To trace him through modern fiction is beyond one man's power; it is a task which, like the writing of history, requires a joint-stock company. The novel which, it has been said, in the time of Fielding and Smollett resembled a country lane on a misty morning, has become a main road of literature, and a long road with many interesting by-ways. But whichever turning he takes, the traveller will pass few milestones without recognising the legal figure. It is easy to be known, for the lawyer of fiction is exceptionally unprepossessing in personal appearance. All great lawyers, it is said, are eccentric; and the novelists have not

forgotten their models. Here stand a few of the ragged regiment:—

Mr. SNAP (*Ten Thousand a Year*) had a face like a terrier—so hard, sharp, and wiry.

Mr. VHOLES (*Bleak House*) was “a sallow man with pinched lips that looked as if they were cold, a red eruption here and there upon his face, tall and thin . . . high-shouldered and stooping.”

URIAH HEEP (*David Copperfield*) was “cadaverous . . . had hardly any eyebrows and no eyelashes, and eyes of a red-brown . . . he was high-shouldered and bony.”

Mr. SOLOMON PELL (*Pickwick*) was “a fat, flabby, pale man, with a narrow forehead, wide face, large head, short neck, and wry nose.”

Mr. PERKER (*Pickwick*) was “a little high-dried man, with a dark squeezed-up face.”

Mr. DEMPSTER (*Scenes of Clerical Life*) “habitually held his chin tucked in, and his head hanging forward, weighed down, perhaps, by a preponderant occiput and a bulging forehead, between which his closely-clipped coronal surface lay like a flat and new-mown table-land. The only other observable feature were puffy cheeks and a protruding yet lipless mouth.”

Mr. MICHAEL FINSBURY (*The Wrong Box*) “was usually attired in the height of fashion, with a certain mercantile brilliancy best described, perhaps, as stylish; nor could anything be said against him as a rule but that he looked a trifle too like a wedding guest to be quite a gentleman.”

COCK, THE OLD LAWYER (*The Life of John Bunce, Esq.*) was “a low man, about four feet eight inches, very broad, and near seventy years old. He was humped behind to an enormous degree, and his belly,

as a vast flasket of garbage, projected monstrously before. His brows were prodigious and frowning in a very shocking manner; his eyes very little, and about an inch within his head; his nose hooked like a buzzard, wide nostrils like a horse, and his mouth sparrow."

Mr. MORTIMER ELLES (*The Human Interest*) was "a clumsy, thick-necked man" with "thick broad eyelids," "cruel little teeth," and "clumsy hands." But he was capable of giving "an exceedingly humorous turn" to the discussions of an Archæological Society.

Mr. GREWGIOUS (*Edwin Drood*) was "an arid, sandy man, who if he had been put into a grinding-mill, looked as if he would have ground immediately into a high-dried snuff"; he had "an impossible wig"; "he had certain notches in his forehead which looked as if Nature had been about to touch them into sensibility or refinement, when she had impatiently thrown away the chisel and said: 'I really cannot be worried to finish off this man; let him go as he is.' With too great length of throat at his upper end, and too much ankle-bone at his lower."

Mr. PEVERIL LOW (*The West End*) had "beak and claws" . . . which "recalled the magnanimity of the vulture."

Mr. SAMUEL GALLEY (*The Fourth Generation*), who assumed the name of Galley-Campaigne, was "a tall, thin figure, with a face which instantly reminded the spectator of a vulture; the nose was long, thin, and curved; his eyes were bright, set too close together. . . . No one could possibly mistake him for a gentleman by birth or by breeding. 'Common' was the word to apply to Mr. Galley-Campaigne."

Or take the group of "twelve or fourteen attorneys," described by Mr. G. W. M. Reynolds in *Pickwick Abroad*,



who practised in the Insolvent Debtors' Court, and looked "much more insolvent than any of their clients":—

"Many of them seemed to lack that useful and very generally estimated commodity—a shirt, if we must tell the naked truth." Those who had shirts had had them turned twice since the middle of the previous month, and occasionally made their appearance in court "in a pleasing and highly interesting state of intoxication." "The most conspicuous figure in this interesting group is generally a very short individual, with a countenance proclaiming for its owner an Israelite extraction. He is blessed with a seedy suit of black, a dirty white neckcloth, and such a hang-dog look that he is quite enough to terrify even the Commissioners and barristers themselves, to say nothing of the opposing creditors, few of whom are calculated to be alarmed at trifles. This worthy individual is sole and undisputed proprietor of a couple of garrets with the use of a back-kitchen, in an obscure street leading out of the Blackfriars Road." Another of the gentlemen described was notable for his black hair, whiskers, and hands; and all of them, it seems, habitually committed perjury as to the amount they received from their clients.

How should these men or their fellows be heroes of romance? In some less favoured field, in some humbler capacity, we must seek the lawyer; there we may rely on discovering him, aiding the hero or heroine, or being the cause or abettor of their distresses. In these small parts, indeed, we find him often fully described, so that when at last the officials have triumphed and the lawyer disappears, when wills are made as well as proved at Somerset House, when his deeds and parchments have been superseded



by penny paper forms made in fraudulent imitation of share-transfers, when all the trustees are companies or public officials, and their advisers all government clerks, then it will still be possible, from the ample records of the Victorian novelists, to "reconstruct" the lawyer as he was in the nineteenth century, as though he were a megatherium or other "fabulous monster now extinct."

In the country he was well housed. "There was a red-brick house," said the author of *Pickwick*, speaking of Town Malling, "with a small paved courtyard in front, which anybody might have known belonged to the attorney." Or his home may have been like Mr. Dempster's, "an old-fashioned house with an overhanging upper storey; outside it had a face of rough stucco and casement windows and shutters; inside it was full of long passages and rooms with low ceilings. There was a huge, heavy knocker on the green door;" and so forth, giving a pleasing picture of financial competence and local importance. John Fosdyke, town-clerk of Bamborough, in Captain Hawley Smart's *At Fault*, lived in a villa well out of the town, with a hundred acres of grass and pleasaunce. If a London practitioner, the solicitor resided in the suburbs, and was "much respected in the neighbourhood of Bushey"—or as might be—where he was possessed of "a genteel villa and an ornamental garden." This was the Lincoln's Inn practitioner; gentlemen who practised in the criminal courts, like Mr. Jaggers, might reside in less favoured districts, and persons of criminous habits, like Mr. Sampson Brass, dwelt (and let lodgings) in Bevis Marks.

The offices of the solicitors were always unattractive. "There is, I think, no sadder place in the world," said Trollope, "than the waiting-room attached to an attorney's chambers in London." In Mr. Slow's offices

in Lincoln's Inn Fields, which suggested this reflection, the waiting-room was a dreary, three-cornered room, the window of which looked against the wall of a building opposite, uncarpeted save by piles of old papers, and ornamented only by a table of descents and kinships and the iron deed-boxes of important clients. At Messrs. Prossiter, Chudkins & Sons', those eminent but very slow practitioners on the other side of the Fields—so slow that their clients about to marry "found the only way was to do it and sign the settlements some months after"—the client sat in the little waiting-room enjoying the supplement to the *Times* till Mr. Prossiter finished his second glass of port and his biscuit.

But when the client penetrated to the attorney's own room he sometimes found a quite decent fellow in the lawyer. Such was Mr. Green (of *The Belton Estate*) greatly respected in the neighbourhood of Chancery Lane, as well as at Bushey, who practised much to "the profit and comfort of a numerous body of clients." Such was Mr. Bond, of Bond & Selby, in Thackeray's *Philip*, who had the misfortune to act for that rascal Uncle Twysden, and quarrelled with him in the most spirited way. "I have been your errand and shall send in my bill in due course," said he, not forgetting his duty to himself, but with more pleasure in the prospect of making the client pay than of receiving, and declining to act further in the matter. Mr. Bradgate, of Bradgate, Smith & Burrows, in the same book, made a less dignified appearance. The coach in which he was travelling with a noble client overturned, and in the confusion the peer was heard to say, "I'm sittin' on my lawyer; I ain't goin' to have *my* head kicked off. Lie still, you old beggar!"

In *Perlycross* Mr. Blackmore gave us the portrait of Mr. Webber, a country family solicitor of the best type, "no time-server; only bound by his duty to the firm and his sense of loyal service to a client." Mr. Webber also felt bound to decline to act. "I shall have to throw it up," said Mr. Webber to himself, "but oh, what gorgeous pickings for that very low-principled Bubb and Cockshalt!" Some natural tears the most conscientious firm may shed as they think of "pickings" thus renounced. Attorney Blickson, of the same book, it must be confessed, was a less pleasing figure. Yet he was "a man of quick natural parts and gifted in many ways for his profession. Every one said he should have been a barrister; for his character would not have mattered so much when he went from one town to another, and above all in such a place as London, where they think but little of it." Mr. James Payn in *Thicker than Water* gave us another solicitor who acted honourably to his own loss, refused to make for a client a will palpably unjust, and lost the business; and the author shrewdly observed that when in the subsequent probate suit the will, made by another and less scrupulous practitioner, was upset, the solicitor spoke only of the failure of his rival in his own branch of the profession, and ignored the five counsel who had shared in the defeat.

Fielding's and Mr. Blackmore's are not the only kindly portraits of solicitors drawn by members of the bar. Mr. Anthony Hope's Tommy Trant in the *Intrusions of Peggy* is an attractive creation, and in that capital story, *The Castle Inn*, Mr. Stanley Weyman has made an attorney one of his principal characters. Mr. Peter Fishwick is a lovable person in spite of frailties, and honest in spite of poverty. He listened

at keyholes ; but that, as he said, was only because he wanted to hear. He nearly secured a fortune for a poor child, but when he found a flaw in the chain of evidence—a flaw which no one else knew—he had (unlike Mr. Oily Gammon) the courage and honesty not to conceal it. “Sir,” said the Earl of Chatham—for that tremendous personage during his historic fit of gout at Marlborough, is one of the characters—“sir, it appears to me you are a very honest man.” Mr. Weyman must have liked his creation, for he set out in his last chapter a letter in which the Lord Privy Seal “acknowledging no higher claim to employment than probity, nor any more important duty in the disposition of patronage than the reward of integrity,” proceeded to offer to the poor attorney the office of Clerk of Leases in the Forest of Dean, with its £500 a year.

But well-housed and generally prosperous, and often very decent fellows though they were, the novelists’ stern sense of truth prevented them from representing lawyers as popular. “Is it not remarkable,” asked Anthony Trollope, “that the common repute which we all give to attorneys in general is exactly opposite to that which every man gives to his own attorney in particular ? Whom does anybody trust so implicitly as he trusts his own attorney ? And yet, is it not the case that the body of attorneys is supposed to be the most roguish body in existence ?” His own small opinion of their merits is shown by his refusal to be at the pains to invent credible names for them. So he gave us Mr. Gitemthruet, Messrs. Slow & Bideawhile, Mr. Squercum, and Messrs. Block & Curling. Messrs. Dry & Stickatit of Bucklersbury netted four thousand a year, but when George Bertram, of *The Bertrams*, who



had taken a double-first at Oxford, was invited by his uncle to occupy a seat in their office with a partnership to follow, he positively refused to consider the suggestion, "Be an attorney?" he cried, with a look of horror. When Mr. Jonathan Slow (who, of course, did not expedite business) had explained to his client, Miss Mackenzie, that Mr. Robb had robbed her of £2500, the commercial gentleman quite truly expressed the view of the profession popular among commercial men. "Those lawyers can never understand that there can be anything friendly about money. They can't put friendly feeling into their unconscionable bills. I believe the world would go on better if there was no such thing as an attorney in it. I wonder who invented an attorney."

Miss E. T. Fowler has invented, in another sense, an attorney who shows us that members of his class, if tolerable persons, should be made a little ridiculous. Says this kindly gentleman of the old tradition, "Religion is religion and business is business, and you will succeed in neither if you do not keep them properly apart. I have always done so, and I flatter myself that I have never neglected either of them; though if I had introduced religion into my business relations, and business capacity into my religious life, I should have been neither the rich man nor the accredited churchwarden that I am." Religion played an important part in the town life of Milby when Mr. Dempster (*Scenes of Clerical Life*) explained that Presbyterianism was founded by John Presbyter, a miserable fanatic who wore a suit of leather and went about from town to village, and from village to hamlet, inoculating the vulgar with the asinine virus of Dissent. But religion is obviously not expected of the lawyer;



he must be a man of the world, and knowledge of the world breeds worldliness. So the folk of George Eliot's England regarded their lawyers as fighting-cocks, from whom no more was to be looked for than good fighting. Mr. Tulliver, in his desire to have a son who could tell people what he thought of them in words that were not actionable, came near to admiration for the profession of the law. Yet, he said, he would not make a downright lawyer of his boy—he would be sorry for him to be a rascal—but a sort of engineer, or an auctioneer and valuer. They were pretty nigh all one, and they were not far off being even with the law *he* believed.

So of the firm of Pittman & Dempster we read:—

“Old Lawyer Pittman had once been a very important person indeed, having in his earlier days managed the affair of several gentlemen in those parts, who had subsequently been obliged to sell everything and leave the country, in which crisis Mr. Pittman accommodately stepped in as a purchaser of their estates, taking on himself the risk and trouble of a more leisurely sale; which, however, happened to turn out very much to his advantage. Such opportunities occur quite unexpectedly in the way of business. But I think Mr. Pittman must have been unlucky in his later speculations, for now, in his old age, he had not the reputation of being very rich; and though he rode slowly to his office in Milby every morning on an old white hackney, he had to resign the chief profit, as well as the active business of the firm, to his younger partner, Dempster. No one in Milby considered old Pittman a virtuous man, and the elder townspeople were not at all backward in narrating the least advantageous portions of his biography in a very round unvarnished manner. Yet I could

never observe that they trusted him any the less, or liked him any the worse. Indeed, Pittman and Dempster were the popular lawyers of Milby and its neighbourhood, and Mr. Benjamin Landor, whom no one had anything particular to say against, had a very meagre business in comparison. Hardly a landowner, hardly a farmer, hardly a parish within ten miles of Milby, whose affairs were not under the legal guardianship of Pittman & Dempster; and I think the clients were proud of their lawyers' unscrupulousness, as the patrons of the fancy are proud of their champion's 'condition.' It was not, to be sure, the thing for ordinary life, but it was the thing to be bet on in a lawyer. Dempster's talent in 'bringing through' a client was a very common topic of conversation with the farmers over an incidental glass of grog at the Red Lion. 'He's a long-headed fellow, Dempster; why, it shows you what a headpiece Dempster has, as he can drink a bottle o' brandy at a sittin', an' yet see further through a stone wall when he's done than other folks'll see through a glass winder.' Even Mr. Jerome, chief member of the congregation at Salem Chapel, an elderly man of very strict life, was one of Dempster's clients, and had quite an exceptional indulgence for the attorney's foibles, perhaps attributing them to the inevitable incompatibility of law and gospel."

The relative positions of Mr. Pittman and Mr. Dempster are a little puzzling. Dickens, whose descriptions of the legal world have been so often discussed, glanced at the relations of solicitors who are partners in *The Battle of Life*. Most of Dickens's lawyers are eccentrics, like the gentleman who married Hamlet's aunt, or the studiously mysterious

and clerk-less Mr. Tulkinghorn. But Snitchey and Craggs are more human. They are, indeed, an instance of human nature at its best. They were partners and still friends. They were friends though Mrs. Snitchey endeavoured to instil in Mr. Snitchey's mind doubts concerning the Craggses, and though Mrs. Craggs did not conceal from her husband her distrust of the Snitcheys. They sat opposite one another at the same desk. They travelled together to transact the same business, nobly sacrificing profit (for only one charge could be made) to the pleasure of each other's company. The attestation by Mr. Britain and Miss Newcome to a deed—the deed of release from their trust—is the best record in all literature of that solemn act. Mr. E. F. Turner, in *Legal T Leaves*, has very entertainingly depicted partners at war with one another. It was a war waged under embarrassing restrictions, for the surviving partners in the firm of Paterson, Pickering, and Debenham remained partners, but they had not spoken to one another for years, and communicated with one another only through third persons. But Mr. Turner is disqualified from depicting solicitors as they seem to the world by excess of knowledge.

And in any case, the attorney grown prosperous and middle-aged interests no one. No one can dream of him as hero. It was reserved for the very kindly, very humorous, and undeservedly neglected James Payn to catch the attorney young, and raise him and his love to the full dignity of hero and heroine. This he did in *A Confidential Agent*; and so far from minimising the difficulties which Mr. James remarked, he cheerily added to them by christening his hero Barlow, and making him a partner in the firm of

Barlow & Bates. "Mr. Frank Barlow was a lawyer of seven-and-twenty or so . . . a good-looking, blonde-bearded young fellow, with keen eyes for a flaw in a document. He had been recently made a partner in a small but thriving legal firm, the business of which, to judge by his intellectual face, he was likely to increase." Like the more celebrated Mr. Jaggers, he judged by the evidence; and when the Pargiter diamonds were stolen he was forced by the evidence to believe his prospective brother-in-law guilty of the theft. For this want of faith in a man he liked much, and his intended wife liked still more, she renounced him, and with him all mankind.

"'My dear Amy,' said Mr. Barlow hesitatingly, 'the logic of facts, to my mind at least, is inexorable. Do not blame me if by nature or training I am compelled to accept it. I am a lawyer——'

"'I know it,' broke in Amy in frigid tones. 'Still it is surely possible for you to give a plain answer to a plain question.'"

When Mr. Barlow received his dismissal he replied in a voice which "would have astonished his partner in the City . . . and would have greatly shaken his professional confidence in him." But in the end he came well out of his difficulties, went to Paris, and in spite of his ignorance of French, unmasked the mystery of the jewels in a couple of days, and proved the innocence of his brother-in-law-to-be. His troubles, we are told, evoked qualities which had been unsuspected in him by all but one; she forgave him for accepting the inexorable logic of facts, and the author dismissed him with the finest compliment a man novelist can pay to his hero—that he is worthy of his heroine. Frank Barlow, then, was a good fellow,



rather conventional, rather limited (like the rest of us) till the book is over; but he is one of our two solicitor-heroes of fiction, and we must make the most of him.

But the lawyer was never so heroic, so amiable, accomplished, and good as he is made to appear in a novel of which more than a quarter of a million copies have been sold. This is his portrait:—

“He was a very tall man of seven-and-twenty, of remarkably noble presence, and somewhat given to stooping his head when he spoke to any one shorter than himself, a peculiar habit, almost to be called a bowing habit, and his father had possessed it before him; when told of it he would laugh and say he was unconscious of it. His features were good, his complexion was pale and clear, his hair dark, and his full eyelids drooped over his deep grey eyes. Altogether it was a countenance that both men and women liked to look upon, the index of an honourable, sincere nature; not that it would have been called a handsome face so much as a pleasing and distinguished one. Though only the son of a country lawyer, and destined to be a lawyer himself, *he had received the training of a gentleman*, had been educated at Rugby, and taken his degree at Oxford.”

Such was Mr. Archibald Carlyle of *East Lynne*. It is, or was, the proper critical fashion to sneer at Mrs. Henry Wood. But the most superfine critic has to acknowledge that she could tell a story and hold the reader interested throughout. To one reader, at least, it appears ungrateful of the Law Society that it has erected no statue to the memory of a writer who taught half a million or so of our countrymen that a solicitor might be a decent fellow. Mr. Carlyle was



more; West Lynne as well as East Lynne obeyed him. Observe, *e.g.* when he desired that one of the local bench should not be at home, how easily he secured his end. The magistrates had left their court a short time, when the need to get Mr. Hare out of his house at seven o'clock that evening became plain:—

“Mr. Carlyle returned to his room, deliberated a few moments, and then rang his bell. A clerk answered it.

“‘Go to the Buck’s Head. If Mr. Hare and the other magistrates are there, ask them to step over to me.’

“The young man did as he was bid, and came back with the noted justices at his heels. They obeyed the summons with alacrity; for they believed they had brought themselves into a judicial scrape, and that Mr. Carlyle alone could get them out of it.

“‘I will not request you to sit down,’ began Mr. Carlyle, ‘for it is barely a moment I shall detain you. The more I think about this man’s having been put in prison, the less I like it; and I have been considering that you had better, all five, come and smoke your pipes at my house this evening, when we shall have time to discuss what must be done. Come at seven, not later; and you will find my father’s old jar replenished with the best broadcut, and half-a-dozen churchwarden pipes. Shall it be so?’

“The whole five accepted the invitation eagerly.”

It must have been a very remarkable person who could thus deal with the men whose clerk he was, and tempt five gentlemen, of at least local position and importance, to visit him by the promise of no more than a little tobacco. Probably more people

have heard of Mr. Carlyle than of any other lawyer in or out of fiction; one can only be grateful that he was so resplendently excellent a gentleman.

It seems unfair to place beside him the solicitors in Mr. Galsworthy's *Man of Property* and Miss Hunt's *The Human Interest*, resembling him only in matrimonial misfortunes; or the "vain and amatorious" hero of *The Sphinx's Lawyer*. That gentleman had the good sense to refuse to go to the bar, realising that his own branch might have some influence and importance. But otherwise he was an unattractive person, and for the present at least solicitors must be content with Carlyle and Barlow (and especially the senior partner) for their heroes.

Doubtless it was to correct any undue professional elation at the possession of Mr. Archibald Carlyle that Sir Walter Besant bared his sharpest switch for us in *The Fourth Generation*, and lashed us in the person of Mr. Galley-Campaigne. In that book Sir Walter pictured a man too happy, a member of Parliament, wealthy, young, handsome, able, distinguished. He was a man so conspicuously favoured of fortune that the lady refused to marry him—at least in the early chapters—because as yet he was untried by the fire, and needed the chastening of trouble. Trouble at once sprang up. Fate did not send loss of wealth or health or constituents. It had a harder trial in store, and disclosed to him—a cousin, hitherto unknown, who was a solicitor!

Members of the profession will perhaps be more concerned at the prophecy of their apparently predestined doom, their ultimate supersession and extinction by Officialism, casually made by Wilkie Collins in *Man and Wife*. One of the two solicitors who

appear there was, we are told, "one of that large class of purely mechanical and perfectly mediocre persons connected with the practice of the law who will probably, in a more advanced state of society, be superseded by machinery." As regards the solicitor in question, the judgment seems unduly severe. He was present at a discussion by Scottish lawyers of a point of Scots law, on which they all disagreed, and he wisely took no part in the argument. But as a description of officialism the one scornful word "machinery" seems perfect; and as a forecast of professional development the sentence is shrewd enough. There was something mechanical in the attorney's origin; he was appointed to do prescribed things, to take certain formal steps in litigation, while the law was matter for serjeants and apprentices. Slowly he developed into a responsible adviser, and, so far as the public was concerned, was *the* lawyer. Now he may be destined to return to his former unimportant condition, and be replaced by officials, men of routine—machinery.

But Wilkie Collins had no hatred of the lawyer. In *Man and Wife* his hatred was reserved for the athlete, the "rough with a clean skin and a good coat on his back," whom, after denouncing fiercely through book and preface, he dismissed in a later edition as "unworthy of literary illustration" and "beneath literary notice." His old Scottish advocate, and Mr. Camp and Mr. Crump, Writers to the Signet, were pleasant persons, while the second English practitioner was an embodiment of mere brain and determination. "His hard, hairless face, his watchful grey eyes, said plainly in so many words, 'I mean to get on, and if you are in my way I mean to get on

at your expense.' . . . A man of rare ability; a man of unblemished honour. . . . You would never have borrowed money of him, but you would have trusted him with untold gold." But then, like other distinguished solicitors of fiction, he was going to the bar, and was destined to die Lord Holchester, L.C.J.

Quite different are the solicitors presented to us by Captain Hawley Smart. Perhaps Hawley Smart was never a very important writer; the *Dictionary of National Biography* unkindly dismisses his books as "feeble in plot and shallow in dialogue." But as an exponent of views of the profession popularly held, his value is as great as greater men's. In *At Fault* we have a man who leads a double life, the Deacon Brodie of our craft; he was "John Fosdyke, Solicitor" in a country town and the principal man of the place, active in all local affairs; while in London he was James Foxborough, theatrical manager, with a music-hall in the City Road and several country companies to manage. He must have led a very busy life; and the constant dread of discovery, heightened by the fact that he had a wedded wife in each establishment, must have been very wearing. To complete the confusion, when John Fosdyke was murdered, the man suspected of the crime was James Foxborough. In *A Race for a Wife*, the son of a rich racing solicitor, himself a solicitor, is pitted against a member of the bar. By a use of the law of copyholds which one can hardly suppose justified, the barrister deprived the solicitor of his very valuable racehorse and of his aristocratic bride at the same time. The good things always fall to the upper branch of the profession.

But even the bar does not escape strictures. Trollope's low opinion of its morals has been cited;



its manners pleased that truculent critic no more: "There is nothing," he says, "so brisk as the ways and manners of lawyers when in any great case they come to that part of it which they know to be the real bone of the limb and kernel of the nut." He discusses the briskness of a parson in the minatory clauses of his sermon, of a doctor with a patient whose gastric apparatus is gone altogether, of a horse-dealer selling a thoroughbred. "But the briskness of none of these is equal to the briskness of the barrister who has just got into his hands for cross-examination him whom we may call the centre witness of a great case. He plumes himself like a bullfinch going to sing. He pecks himself like a sparrow on a paling. He crows amidst his attorneys and all the satellites of the court like a cock among his hens. He puts his hand this way and that, settling even the sunbeams as they enter, lest a mote should disturb his intellect or dull the edge of his subtlety."

Charles Reade saw the advocate more truly, if one may judge from his account of the trial in *Hard Cash*. It was a wonderful trial, with unexpected but invaluable witnesses stepping down from the gallery just when wanted. But the author appreciated the really extraordinary skill which busy advocates develop in the art of presenting a case as favourably as may be; and he depicted very well the feelings of the auditors, swayed now this way and now that, as one side and the other in turn presented their arguments and their evidence.

Some slight sketch of an advocate in the making appears in *Called to the Bar*, by Bracebridge Hemyng, the creator of Jack Harkaway, who twenty years ago was always "the immortal Jack Harkaway," but as we



have quite forgotten that hero the adjective is unimportant. The author commemorated, as did the author of *Walter Hurst*, the student's first dinner in the Inns of Court, with its hired gown and fee to the laundress. And he has a sketch—evidently remembered, not invented—of a law lecturer with an original taste in punctuation:—

“These are the grand, principles of law, laid down in the case, of Brown, *v.* Watkins 3, Term, Reports, page, one hundred and sixty-four; Brown, *v.* Watkins 3, Term, Reports, page, one hundred and sixty-four.”

Another sketch of the rise and progress of a young advocate is Mr. Pett Ridge's *Three Women and Mr. Frank Cardwell*. Mr. Cardwell was a very fortunate young man. The three women concurred in helping and encouraging him from the day when, having gloriously scored 61, not out, for the Single against the Married, he left his village home for London. He commenced his career towards the bench by way of a solicitor's office, a course more usual in fiction than in fact, under a solicitor who had a trick of moving all the papers on his table, or all the ornaments on the mantelpiece when he spoke—a new trait in the lawyer of fiction. Mr. Prossiter, of Prossiter, Chudkins & Son, in similar circumstances, tapped his teeth with his eyeglasses. Perhaps these symptoms denote an access of nerves, and the decay of what was once a fine, tough constitution.

Mr. Cardwell soon passed to the higher branch of the profession, having studied elocution and other things at the Birkbeck Institution (it was not a college then), which is very amusingly described. Sent for to a police court to prosecute, he found himself appearing for one of the “three women” against another of them

on a charge of embezzlement. Immediately after he learned that the object of the theft had been to provide part of the funds—anonymously bestowed through the solicitors who had been his employers—which had enabled him to go to the bar. Renouncing the third of the three ladies, whom he loved, he felt bound, as soon as the prosecution had been abandoned, to offer marriage to the lady whose liking for him he had thus learned, and also to repay her the money she had advanced. Some years of struggle followed. He wrote for the press, and when challenged on this point by the friend for whom he devilled, replied with pretty wit “the crimes I commit are not all kept out of the newspapers.” Ultimately happiness prevailed; Number Two of the ladies renounced him; a legacy from a deceased begging-letter writer, acquitted owing to his efforts, enabled him to repay her; and Number Three was ready, with the blessing of Number One, to crown the good things Mr. Cardwell owed, in common doubtless with the rest of his sex, to women.

There is a cheerfulness and good-nature about the book and its attitude towards lawyers which marks a change of view. So in Mr. Hornung's *Young Blood* we find quite pleasant mention of a solicitor, even though he advertises for an articled clerk at a premium to be returned in salary. But the most striking testimony to a new and more kindly disposition in novelists appeared in a book of Mr. George Gissing, who, with many gifts, could hardly be said to take too optimistic a view of life:—

“There, occupied with a newspaper, sat a man whose fifty years still represented the prime of life, a tall, athletically-built man, his complexion that of a school-

boy after summer holidays, his brown hair abundant and crisp, spring and stay declared in every muscle of his limbs and frame. Lightly he arose, gracefully he swung forward, with the bow and smile of one who knows not constraint. Mr. Kerchener followed the law, but he also, whenever a chance offered, followed the hounds and with more gusto. At school and university he had won palms; that his place in academic lists was less glorious mattered little to one who had a comfortable seat awaiting him in the paternal office."

If one compares this with the personal descriptions of lawyers previously quoted, one will see how greatly better we fare of late.

On the whole, perhaps, lawyers are treated no worse in fiction than in view of popular opinion they ought to expect. Have not the architects Mr. Pecksniff as well as the hero of *The Laodiceans*? and medical men Dr. Jekyll as well as Dr. Thorne? The barrister, indeed, fares very well, in spite of Trollope's strictures; though, as Mr. James has noted, the briefless fare the best. Jack Stryver gets the fees, but Sydney Carton and Mr. Pendennis get our affection. But even the barrister in practice is sometimes the heroic defender of right, the eloquent champion of the oppressed poor, the vindicator of his country's liberties, and so forth. A function, attractive, no doubt, and in many ways admirable, but not heroic, is presented generally in its most pleasant aspect. The solicitor has harder measure. He also may be, and, less rarely than is supposed, he is, a champion of the oppressed poor; but he is so at the risk of being charged with bringing speculative actions for the sake of costs. His unlovable characteristics are insisted on. He is told that as a wooer he is

merely ridiculous; and, in a sense, every man in such circumstances is ridiculous to his neighbour.

“How strange a thing a lover seems  
To animals that do not love”—

said the poet of “The Angel in the House.” One would have thought the solicitor stood as well as a stockjobber or a surgical instrument maker. His greed is exaggerated: though probably every professional man finds himself bound to meet the world’s reluctance to pay his fees by a corresponding determination to make the world pay. It is idle to deny that solicitors have their failings, of which perhaps their failures are the worst. If these failings are exaggerated, if they themselves are represented, despite Fielding’s protest, as hardened by their calling into mere avaricious and malicious machines, the novelists’ excuse is strong and satisfying.

It lies in his need for a credible villain. In charitable times, when we have been led to see the mixed nature of men and the redeeming qualities of the bad, it is more than ever difficult to find a satisfying, convincing evil-doer, to disturb the world’s peace, and bring the troubles through which the lovers are to fight their way to happiness. The lawyer fills this vacant place. He is, as Mr. Radford said of the Jew that Shakespeare drew, a serviceable villain. The world accepts his villainy without question; there is no strain on the reader’s credulity, for he has been taught to believe in it, nursed and dandled into an attorney-hater. It is the most natural thing that the novelist should resort to the stock figures of his craft. Perhaps it was so that Mr. Blackmore had recourse to the law in *Cripps the Carrier*. Mr. Luke Sharp was a devil of a fellow. But only an inveterate novel-reader



would have suspected this from his first appearance. At Oxford, "in a highly respectable house, a truly respectable man was living with his business and his family. 'Luke Sharp, gentleman,' was his name, description, style, and title; and he was not by any means a bad man, so as to be an attorney."

"This man," we learn further, "possessed a good deal of influence, *having much house property*." He had also a good practice, and "a commanding figure, and fine straightforward aspect," and "left an impression wherever he went of honesty, vigour, and manliness." Moreover he "had led an unblemished life since the follies of his youth subsided; he subscribed to inevitable charities, and he waited for his rents, when sure of them."

In spite of these engaging characteristics, Mr. Sharp was deep in crime and had abducted the heroine, apparently with the object of giving his son leisure for wooing and freedom from competition. The plan failed, since the younger Sharp loved too much and freed the lady. And his father ended with a lurid suicide, shooting himself at night, on horseback, in the middle of a pond, picturesque details that never occurred in like circumstances to Mr. Gammon.

It is strange that the lawyer at odds with fate, the barrister disbarred, the criminous solicitor struck off, or in peril of being struck off, the rolls, has been so little used by novelists. He surely presents all the materials of a villain with vast melodramatic possibilities. A man of some education, with experience of affairs, with a grudge against fortune, and with no character left to lose, is obviously capable of things not to be credibly predicated of commonplace evil-doers. Yet, save for a small book, *A Desperate Voyage*, by Mr. Finlay Knight, he remains unemployed in fiction. Mr. Carew of Carey



Street—Honest Hal to his friends—a man of few faults, save that his income was too niggard for his generous expenditure, and that the Stock Exchange failed to recoup his losses of clients' monies, ran his rigs desperately. He stole a yacht, shipped a crew of criminals at Rotterdam, and made for the Spanish Main, intending to appease his conscience by "good works in a far country." It was not to good works he sailed, and he soon found himself, by force of circumstances, a buccaneer and murderer, now committing piracy, now fighting for his life with land crabs through the night, now driven to destroy his crew by fostering the infection of yellow fever, till arrest at Pernambuco, and poison, put an end to his career. He lived (from the time he left Carey Street) and died, a "villain of ha'-penny sheets." At least he did not feel Romney's remorse for the pitiful pettiness of his offences.

So they end as they began; from Dowling to Honest Hal Carew, from Count Fathom's attorney to Luke Sharp, they sound the gamut of crime. By the voices of the men who recount (and, indeed, construct) the evidence they stand condemned, a rascally crew, for whom apology is hopeless, defence impossible.

Most men, no doubt, like their calling to be well thought of; but only a young man minds criticism much. Doctors get used to the word quack, and solicitors to the name pettifogger. After a while we think of such terms as applied only to our rivals. We recognise that they are unjust, and regret them with the mild sentiment aroused by the misfortunes of our friends. That sentiment is not enjoyment, as Mr. Dooley, correcting the misquoted European philosopher, has taught us, not actually enjoyment; but we feel the better for it.

## THE ATTORNEY AS PERSON OF IMPORTANCE

### SIR JOHN HAWKINS

SIR JOHN HAWKINS may stand as a type of successful attorneys, a small but notable branch of the profession. He was rich, prosperous, distinguished, and eminently unpopular. He was a man of real ability, and the butt of the wits; the author of two good books, eclipsed and almost extinguished by competing volumes; a man who rendered some service to the State, the associate of the most distinguished men of his time, and he is remembered only by their sneers.

Hawkins, who claimed descent from the more famous Sir John, was born in 1719, the son of a carpenter and surveyor (he "was but of the trade or calling of Sir Christopher Wren," said his granddaughter), and the son was destined for the father's profession; but after a "regular course of architecture and perspective" he was persuaded to alter his resolution and betake himself to the law. His early days there were not easy. His master—for so, in those early days of "articles," the articulated clerk's principal was called—is said to have been "more anxious to render him a good copying clerk by scrupulous attention to his handwriting than to qualify him by instruction to conduct business." The same complaint has been made by clerks of



*Lambert del.*

SIR JOHN HAYWOOD KENT  
Ætat Suæ LXII.



later days, and, like them, Hawkins probably underrated the value of familiarity with the forms of documents, acquired by copying and by that alone. With this "old miserly attorney," Mr. Scott of Devonshire Street, Bishopsgate, Hawkins lived through his apprenticeship in the heart of the city. One servant, an old woman, kept house. "She never drest otherwise than for the most sordid work," says Miss Lætitia-Matilda Hawkins, "and I have heard my father say, that whenever she had been obliged to make a brisk fire, to dress a mutton-chop or beef-steak, the happy tidings of a promised meal were made known in the office by the loud cracklings of the old parchment-deeds which she tied round her in lieu of the 'Corset à la Diane,' or the 'Circassian boddice.'"

His days being occupied in copying, Hawkins "abridged himself of his rest" to read, and read to such purpose that at the end of his clerkship he was pronounced an able lawyer—so able, indeed, that a judge was known to stop him to ask his opinion on legal matters. With law he mixed literature; he wrote an "Essay on Swearing," of the non-judicial kind, and by the time he was twenty had contributed an "Essay on Honesty" to the *Gentleman's Magazine*, and verses to other periodicals. He was now, we are told, being admitted an attorney, "to seek for the means of procuring business by making for himself proper and reputable connections," but found time, on the introduction of Mr. Immyns, another attorney of musical tastes, whose gaiety of disposition proved a bar to professional success, to join the Madrigal Society, and, soon after, the Academy of Ancient Music. From this Hawkins proceeded to an



indiscretion, which might have ruined his career, in writing the words of some five cantatas. These, however, secured both musical and professional success; they not only won applause but served to introduce their author to many persons, who found him "a modest, well-informed young man, of unexceptionable morals." He knew all the musical celebrities of his day, and Handel tried his new compositions "on his young ear." The friends doubtless became clients and visited Clement's Lane, where Hawkins shared a house with a doctor, more "fitted to be called a candidate for practice than a practitioner, who had no patients but the attorney, and avenged himself on him for his refusal of a loan by protracting the duration of a low fever in which he attended him."<sup>1</sup> From Clement's Lane Hawkins moved to Austin Friars, and in 1753 married Sidney Storer, the sister of a friend and client. A match-making acquaintance had previously introduced him to the lady afterwards famous as Mrs. Barry the actress. As he was fond of music she sang to him, but sang of *mutual* love, while another possible match turned *veteran* into *veterian*. To his marriage Hawkins owed not only his lifelong domestic happiness, but his early prosperity; for his bride brought him a portion of £10,000, and six years later, at the death of her brother, an even more considerable fortune.

<sup>1</sup> He was Nicholas Munckey, whose name was indicated by the — in the lines:—

"When — walks the streets the paviers cry  
'God bless you, sir!' and lay their rammers by."

He was so stout, Lady Hawkins told her daughter, that when it was the fashion for gentlemen to dress with a great display of their very fine linen, the widest then made, which was Holland. five quarters wide, was strained over his person. He died with the comment on his lips that it was — hard to be taken off just then, when he was beginning to get into practice.

Miss Hawkins, quoting inaccurately from memory, said that James Boswell, of Auchinleck, Esquire, had declared that her father had "married an old woman for her money," a charge which she repudiates, "unless the marrying a very pretty woman, twenty-six years of age, when he himself was seven years older, can be construed into this baseness." The entertaining story of Boswell's own matrimonial adventures, with their unromantic conclusion, leaves him more exposed to criticism than was the attorney.

On the falling in of his wife's inheritance, Hawkins felt justified in abandoning the law, sold his practice, and divided his time between the house at Twickenham, which had hitherto been but a "long-vacation villa" and London. His days were given to fishing—he was an enthusiastic angler, proud of his ability to throw a line fourteen yards long, with a fly of his own making—and to collecting a library, and his evenings to music. Besides being a member of several musical societies, Hawkins regularly gave concerts at his house. From the accounts we have of his thrifty, if not penurious habits, it might be surmised that the ear alone was greatly regaled on these occasions, were it not that Miss Hawkins insists on the constant liberality of her mother's table. Penurious Hawkins may have been, but he was not avaricious. The fortune which his wife inherited might have been doubled, had not Hawkins and his wife been indefatigable in persuading Peter Storer to leave an equal share of his property to another sister who had offended him. "We have lost more than £1000 a year by this," said Miss Hawkins, "but our gain is inestimable; we can ride through a manor gone from us, and see fields not our own with exultation." When in later years an offer

was made to enter his sons at Westminster, Hawkins declined the invitation, because he considered it unfair to the "poor scholars" for whom the foundation was designed.

Appointed a magistrate in 1761, Hawkins at first would not accept fees, not even, says the chronicler, the legal and authorised ones; but, finding this encouraged the litigious, he afterwards accepted the fees and devoted them to charity. Having called attention by a pamphlet to the need of improving the law as to highways, he appended suggestions for a codifying and amending statute, and so excellent a draftsman did he prove that in thirty years the Act was not found to need any alteration.

In 1741, Hawkins made the acquaintance of Dr. Johnson, meeting him, as did the Doctor's other biographer, at a bookseller's, though with results less entertaining to the world. In 1749 they were together members of the club meeting at the "King's Head," in Ivy Lane, and when in 1763 *The Club* was founded, Hawkins became one of the original members. Seeing that that club was intended to consist of such men that if only two of them met they should always be able to entertain each other sufficiently without waiting for more company, his election was a high compliment. Ten years later Hawkins contributed some notes to Johnson's edition of Shakespeare. Boswell, with intent to decry Hawkins's qualifications as Johnson's biographer, protested that he had seen Hawkins in Johnson's company but once or at most twice. "I do not think Johnson ever named Boswell to my father," says Miss Hawkins in rejoinder. Boswell himself was in Johnson's company but 276 days, including the eighty spent in

the Hebrides, of the seventy-five years which the sage lived; at Johnson's death Boswell had known him only twenty-one years, while Hawkins had been acquainted with him, and lived in the same city as he, for forty-three years. Moreover, Hawkins had known Johnson, while Boswell had not, at the time of life which Sir Leslie Stephen declared to be the most interesting, when his faculties were being developed and the victory being won. During those forty-three years Hawkins did not escape, as none of Ursa Major's friends could hope to escape, his rough hug. Johnson did not love Hawkins's profession;

" . . . here the fell attorney prowls for prey,"

he wrote in *London*. In his *Life* of Blackmore he said that that hapless poet "was the son of Robert Blackmore, styled by Wood 'gentleman' and supposed to have been an attorney." Nor did Johnson approve of Hawkins's saving methods. He declared him to be an honest man at bottom, "but," he said, "to be sure he is penurious, and he is mean, and it must be owned that he has a degree of brutality and a tendency to savageness that cannot be defended." Thrift is, doubtless, a virtue more useful to ourselves than admirable in our friends. The Doctor, like Goldsmith and Sir Joshua, had often been the lawyer's guest; Miss Hawkins recalled the great man's standing in front of the fire before dinner, his wig resting on her shoulder, and inviting her to be his little housekeeper, but not so far interrupting his conversation with her elders as to wait for a reply. As a teetotaler Hawkins should have won sympathy from the tea-drinking Doctor. But it was his refusal to pay his share of the wine which other members had consumed that won for Hawkins the adjective of "unclubable," by



which he is constantly described. Boswell's editors, in their zeal for their author, have never recalled that it was the Doctor's way in conversation to abuse his friends with humorous exaggeration. When, asks Mr. Birrell, in speaking of a similar case, will it be recognised that Carlyle as a critic is to be judged by what he himself corrected for the press and not by whimsical extravagances in private conversation? If any one had been concerned to defend Hawkins, a like appeal might have been made from Johnson's table-talk to his letters and actions.

Whatever Johnson's true opinion, Hawkins probably was never popular at the club, and another disagreement, according to Boswell's account, led to his ceasing to attend the meetings. "The fact was that he one evening attacked Mr. Burke in so rude a manner that all the company testified their displeasure; and at their next meeting his reception was such that he never came again." As a witness against Hawkins Boswell is never to be trusted; but there is little doubt Hawkins still thought of the Burkes as Irish adventurers, and perhaps the attorney's own account of the incident—though he was, what Johnson was not, a domesticated man—is a little unconvincing. "As I was the only seceder from this society, my withdrawing myself from it seems to require an apology. We seldom got together till nine; the enquiry into the contents of the larder, and preparing supper, took till ten; and by the time that the table was cleared it was near eleven, at which hour my servants were ordered to call for me; and as I could not enjoy the pleasure of these meetings without disturbing the œconomy of my family, I chose to forego it." When the Essex Head Club was founded he was not elected



a member, and Miss Hawkins admits that her father's description of it, as a sixpenny club meeting at an alehouse, may have been due to his resentment at being passed over.<sup>1</sup>

In spite of this, and of Hawkins's withdrawal from The Club, Johnson remained on good terms with him, and appointed him one of his executors. Mrs. Thrale noted that Hawkins, like Garrick, was a man whom Johnson would allow no one to abuse but himself. When in doubt whether he should reply to an attack on his *The False Alarm*, Johnson asked Hawkins for his opinion, and by him was dissuaded from departing from the sound rule he had followed. When, on Thrale's death, Johnson found himself for the first time an executor, it was again to Hawkins that he turned for advice. To Hawkins Johnson wrote in 1784, when returning dropsy drove him back to London, "when I come let me have the benefit of your advice and the consolation of your company"—the language of friendship and esteem, surely, rather than of mere compliment. Not long before Johnson's death, Hawkins and he, with one other, the sole survivors of the Ivy Lane Club, driven by the builder from their old meeting-place, dined twice together in St. Paul's Churchyard, and again at Johnson's house. They were, one would think, sad reunions, recalling only the pathos of past meetings, but Johnson was yet loth that they should break up.

In public business, if not popular, Hawkins was seen to be serviceable. In 1765 he had been elected

<sup>1</sup> Richard Clark (1739-1831) one of the attorney Lord Mayors of London, was a member of this club. In excuse for Sir John Hawkins it may be said that Sir Joshua Reynolds spoke little better of it; it was, he said, "composed of a strange mixture of very learned and very ingenious odd people" (*Boswell*, iv. 258-438).

chairman of the Middlesex Quarter Sessions; and for the suppression of election riots, which he effected at some personal risk, he was knighted in 1772, and presented to the King by the Secretary of State with the commendation of being the best magistrate in the kingdom. Boswell, whose personal good-humour rarely stayed the malice of his pen, characteristically declared that "upon occasion of presenting an address to the King," Hawkins "accepted the usual offer of Knighthood." The defence of his county against a proposal to throw on it an undue share of the expense of rebuilding Newgate, which secured for Hawkins the chairmanship of the Bench, seems nowadays a less notable incident in his magistracy than the recourse had to him by Lord Mansfield at the time of the Gordon riots. As soon as the Chief Justice heard of the mob's intention to destroy his house, he sent a messenger to Hawkins, begging him to come at once. Sir John went with a body of constables to Bloomsbury Square, and found Lord Mansfield in a state of great agitation. Sir John sent for a detachment of soldiers, who arrived soon after. They were placed, Lord Mansfield insisting, in the vestry of St. George's Church. Hawkins, we are told, remonstrated against this, and with better generalship would have placed them in the house. His judgment proved sound, for the mob arrived, the house was fired, the library and manuscripts perished, and soon the walls alone remained.

Hawkins, meanwhile, had been summoned to Lord North's in Downing Street, where an assault was expected; an error was made in the message, and he went to Northumberland House. There the mob was threatening, but no attack was made. Hawkins, how-

ever, was recognised and threatened, and at the Duke's request stayed the remainder of the night. When he reached his house at Queen's Square, Westminster, he found it marked with the red cross, which he knew to be the signal that it was to be destroyed. As a magistrate, he could hardly resort to the device of Morgiana, and the crowds made it difficult to remove the mark. But Hawkins, assuming the careless attitude of a spectator, with his handkerchief held behind him, managed unseen to rub out the signal. Here, surely, was an opportunity for the historical painter, which should not have been lost. The red cross was not renewed, and the house escaped the destruction which next night came on all others so distinguished.

Hawkins was afterwards to suffer the loss by fire of his library, but not until his principal work was done. In old age, as in youth, Hawkins's favourite recreation was music. For thirty-two years he accumulated materials for his history of the art, and in 1776 the long-projected book appeared, with the title of *The General History of the Science and Practice of Music*. It was eight years later that he helped Johnson to make his will. Indeed, but for him, Johnson probably would have died intestate, leaving unfulfilled his intention of providing for his man-servant. So great was Johnson's reluctance to do what he would have blamed another for delaying, that repeated requests by Hawkins, both by letter and word of mouth, were for a time unavailing. Then Hawkins prepared a draft will, leaving blanks to be filled in with the names of the executors and residuary legatee. It was only when Hawkins followed his friend, who had gone on a visit to Islington, that he found Johnson had signed the document. " 'But that,' said I " (runs

Hawkins's account), "had blanks in it, which, as it seems, you have not filled in with the names of the executors.' 'You should have filled them up yourself,' answered he. I replied that such an act would have looked as if I meant to prevent his choice of a fitter person. 'Sir,' said he, 'these minor virtues are not to be exercised in matters of such importance as this.'" This is the conduct which Boswell describes as "obtaining the office of one of Dr. Johnson's executors" by "assiduous attention" to the great man. Only on Hawkins's insisting did Johnson consent to dictate his instructions, and the will was prepared and executed. The conclusion of the passage recounting this contains one of those personal references which moved the critics to declare Hawkins a man of coarse fibre, always boasting of his coach and his other belongings. "Having executed the will with the necessary formalities, he would have come home, but being pressed by Mr. and Mrs. Strahan to stay, he consented, and we all dined together. Towards the evening he grew cheerful, and I having promised to take him home in my coach, Mr. Strahan and Mr. Ryland would accompany him. . . . In the way thither he appeared much at ease, and told stories. At eight I set him down, and Mr. Strahan and Mr. Ryland betook themselves to their respective homes."

The executorship brought Hawkins no thanks. The dispositions Johnson had made of his property were little to his taste; and with much asperity he tells in the conclusion of his *Life* the consequence of Johnson's resolve to be *nobilissimus* to his negro servant, "as a caveat against ostentatious bounty, favour to negroes, and testamentary dispositions *in extremis*," and as instances that "serve to show the



short-sightedness of human wisdom and the effects of ill-directed benevolence." The insufficiency of the provision made for Johnson's lunatic cousin, and the absence of any provision for Heely, a connection of Johnson by marriage, whom in his lifetime Johnson had generously helped, vexed the executors. But the worthlessness of Frank Barber, the residuary legatee, was the chief annoyance. Although he received £1500 from his master's generosity, he could not afford, he said, to help Heely; he tried to diminish the poor provision for Elizabeth Herne; he was willing to procure perjury to avoid payment of a just debt of his master's. Fast as Hawkins paid him sums on account of his legacy, so fast he spent them and came for more, and Miss Hawkins saw him "with all the vulgar insolence of a hackney coachman chuck up a few halfpence, which, he said . . . were all he had remaining of a large sum which he had received very shortly before." Naturally, as Miss Hawkins tells us, he "as quickly as possible reduced himself to the refuge of a workhouse." Hawkins had too much experience of business to expect gratitude from such a *cestui que trust*. He had yielded to Barber's request to let a connection of his conduct the funeral, and was blamed for the parsimony with which it was conducted; he was blamed for charging against the estate his expenses for coach-hire—an expense perhaps accounted for by the severity of that winter, when, says his daughter, "none but hackney horses could be risked in the street." From the meanness of charging his disbursements, it was but a slight extension of criticism to add that Hawkins tried to steal the Doctor's watch.

After Johnson's death Hawkins, at the request of



the booksellers, edited an edition of his works, and on the same invitation wrote his *Life* of the author. This is his main offence; but for this we should have heard little of his failings. Boswell naturally disliked the anticipation of his more slowly evolved biography, especially by one whom he had not regarded as a rival, and he greatly resented the semi-official status which the booksellers' request seemed to confer.

Hawkins did not long survive his illustrious friend. He had left Twickenham in 1771, after his father's death, having lingered there because of the old man's affection for the place. From Hatton Street he was driven by repeated attempts at burglary. His house at Queen Street, Westminster, was burnt (the materials for the *History of Music*, which had been presented to the British Museum, escaping the fate of his other books), and at Broad Sanctuary he was attacked by paralysis. Even the waters of the Islington Spa failed to restore him, and he died, or, as a friendly biographer put it, in delicate allusion to his literary tastes, apoplexy put a period to his life, on the 21st May 1789.

Unfortunately for Hawkins's reputation, we depend mainly upon Boswell for our knowledge of him, and Boswell's book opens with a set attack. Between Boswell and Hawkins, it is plain, there was a natural antipathy. Yet the two men lived on terms of apparent friendship. Hawkins, whatever his faults, was busy to serve a friend. When the Scotch burr first stuck to Johnson, the knight was apparently dissuaded from offering him hospitality by Langton, who knew, what most of Boswell's acquaintances were to learn, the difficulty of disembarassing oneself from so persistent a person. But in the late sad years of Boswell's

life, when he was living in London with hopeless schemes of work at the English bar, Hawkins saw more of him. "I breakfast to-day with Hawkins," Boswell wrote to Temple; "he is, I believe, a good man, but mean for a man of his fortune." "Hawkins and I got into good social plight this winter," Boswell wrote again; "I dined at his house one day with the Hon. and Rev. Wm. Stuart, and they dined at mine a few days after, and we were exceeding well." Two years later he is still speaking of courtesies exchanged. "Hawkins has been very attentive to me this winter, and we must take him as he is." Boswell's daughters had twice given "little parties for cards and music, and have done wonderfully well. Hawkins was with us both times." Yet while Boswell was writing thus to his friend, he was writing for the public (unless, indeed, he sharpened the phrases when Hawkins was dead, and could no longer reply), in a book which many thousands were to read, that Hawkins's rigid formality of manners prevented his living on terms of companionable ease with Johnson; that he had no nice perception of the finer parts of Johnson's character; that he was inaccurate and careless; that his book was a ponderous farrago; that "a dark, uncharitable cast" pervaded it; and that in it the most unfavourable construction was put on the character and conduct of his illustrious friend. To Temple he confided that Hawkins should not be spared, and throughout his book Boswell seizes every occasion to animadvert upon the errors of his rival; he speaks repeatedly of his "solemn inaccuracy," his uncharitableness, his rigmarole, and declares him "unlucky on every occasion." He could not even speak of Blackfriars Bridge without quarrelling with Hawkins.

The real offence which Hawkins had given in his book—apart from the book's existence—was a small matter. It was merely his way of mentioning Boswell's name; but on this occasion Hawkins was indeed "unlucky," and, if he knew the vanity of the man, reckless. Hawkins wrote that Johnson "had long been solicited by Mr. James Boswell, a native of Scotland, and one that valued him highly, to accompany him in a journey to the Hebrides." This reference deeply mortified Boswell. "Hawkins is, no doubt, very malevolent," he wrote; "see how he speaks of me as quite unknown."<sup>1</sup> He even expostulated in person upon the affront which he considered had been offered to him. The account Miss Hawkins gives of the interview is sufficiently entertaining. Boswell, she says, "showed himself uneasy under an injury which he was much embarrassed in defining. He called on my father, and being admitted, complained of the way he was enrolled among Johnson's friends . . . where was the offence? It was one of those which a complainant hardly dares to embody in words; he would only repeat, 'Well, but *Mr. James Boswell!* surely, surely, *Mr. James Boswell!*' 'I know,' said my father, 'Mr. Boswell, what you mean; you would have had me say that Johnson undertook the tour with *The Boswell!*'" Boswell, the lady suggested, would have been content with "the celebrated," or "the well-known," but as he could hardly say this, he had to acquiesce in the amendment proposed, which, however, was not promised, or made, in the second edition; and he took his revenge, after Hawkins's death, by styling his rival, "Mr. John

<sup>1</sup> On another occasion, when some lines appeared in the press, "by Mr. Boswell," he hastened to explain that these were not by James Boswell, Esquire.

Hawkins, an attorney," and by the many attacks which enliven his book.

But the greatness of Boswell's book has been the occasion of unwilling and partial redress to Hawkins for Boswell's own criticisms. The care with which Boswell's *Life* has been edited, and his methods criticised, has served to show how unjust his animadversions sometimes were. Mr. Percy Fitzgerald<sup>1</sup> has pointed out that Boswell, in order to justify his criticisms, quotes, after the publication of the second edition of Hawkins's *Life*, passages in the first edition which the author had modified, and once, at least, misquotes even that. Boswell, referring to Hawkins's account of Johnson's attempt to cut himself for dropsy, said that the official biographer suggests "a charge against Johnson of intentionally hastening his end." Hawkins had said "that this was not done to hasten his end . . . I have not the least doubt." Boswell again sets out to "refute a very unjust reflection" on Barber, the man-servant, but in the zest of his attack on Hawkins, forgets to justify Barber, and refutes nothing. Boswell's casual suggestion that Hawkins had no affection for his wife seems to have been a mere untruth, absolutely unsupported. In his home Sir John was singularly happy. But there his felicity ended.

Though not in the sense Boswell meant, Hawkins, as a literary man, was unlucky on every occasion. Yet, but for Boswell's *Life*, Hawkins's might have been forgotten. Because of the interest Boswell aroused, and still arouses, in Johnson, Sir John's *Life* is—not, indeed, reprinted or praised—but pillaged, ransacked for facts and observations to supplement Boswell's necessarily

<sup>1</sup> *Life of Boswell*, ii. 157.



imperfect account of Johnson's early years. Some fifty or sixty pages of his book are printed now in the *Johnsoniana*, inserted by editors from Croker down to Dr. Birkbeck Hill. Dr. Hill, an ardent Johnsonian and equally ardent Boswellian, thought it necessary to introduce Sir John by collecting all the ill-natured references to him which could be found in Malone (the real source of much of Boswell's venom), Percy, Bentham, Porson, and elsewhere, and added a suggestion of his own that Hawkins was a hypocrite.

For Sir John, it must be admitted, had many enemies. They declared him mean, litigious, haughty, detestable. Boswell confessed that "Johnson might have esteemed him for his decent religious demeanour"; Malone would scarcely concede this. Malone declared that Percy said that Dyer gave Hawkins a character painted in the blackest colours: so far afield had the evidence to be fetched. Malone added, on the authority of Dyer, that Hawkins had set husband against wife and brother against brother, and fomented their animosity by anonymous letters. Boswell admitted that Hawkins's book was a collection of curious anecdotes and observations which few men but its author could have brought together. But Bentham declared that Hawkins was "ignorant, picking up little anecdotes and little bits of knowledge." Bentham added that Hawkins was litigious, and even Horace Walpole, an old Twickenham friend, admitted the latter charge. "Being," he says, "a very honest, moral man, but of no brightness, and very obstinate and contentious, he grew hated by the gentry, with whom he went to law both on public and private grounds." From the more favourable account given in Chalmers's *Biographical Dictionary*, we learn that in 1778 Hawkins compelled



the Surveyor of the Ordnance to take down a wall tending to obscure the east window of St. Margaret's, Westminster. This is doubtless the foundation of the charge, and in another man it might have been accounted not litigiousness, but public spirit.

It has to be remembered that if Walpole sometimes spoke slightly of Hawkins, he was a friend (in spite of being a neighbour) for many years, and often defended him, while his view of Boswell was much more unfavourable. Indeed, if a personal comparison between the two biographers were to be made, Hawkins would have little to fear. Infinitely inferior as an artist, he was a much more respectable and estimable man. Boswell, the son of a judge, entering the law with every opportunity of success, failed at the bar of Scotland and England in turn; Hawkins, without influence to help him, or aught but his own ability, did well in his own branch of the law till it was no longer necessary to follow it; and from his appointment until his death was a magistrate of repute. If Hawkins seemed unclubable because of his abstinence, Boswell presents a less pleasing picture, drunk and incapable at night on the flagstones of Carlisle, and applying next morning in court for a writ of *quare adhaesit pavimento*, the butt of the bar. If meanness were Hawkins's offence, his rival's career of uneasy dependence upon his father, or of constant embarrassment when in possession of a good income, seems little more respectable. Boswell's matrimonial adventures in search of a beautiful heiress resulted, indeed, in his gaining a wife better than he deserved, but little in accord with his ambition; Hawkins was fortunate while marrying where money was to secure a happy household clime. If Hawkins's books brought less

fame than he desired, his sons and daughter at least always jealously defended his reputation; Boswell's children could not bear to hear mentioned their father's book. There may have been justification for the suggestion of pride; Miss Hawkins admits that her father was "not deficient in that sort of pride which disdains all interest in commerce"; and George Steevens wrote that Hawkins—

"Scarce deign'd to kneel when knighted by the Crown."

Steevens had not only stolen and published a confidential manuscript—for which the knight "turned him out of the house by the collar"—but had laid himself open to retort in print by "atrocious conduct . . . with regard to a friend's conjugal peace," and by showing "great want of ready courage when in the Essex militia, on some occasion when courage was in request." Of these notorious incidents Hawkins availed himself when Steevens published his edition of *Shakespeare*. The epigram, Miss Hawkins declared, "has been confessed by good judges, one of the best in our language":—

"The dark designing villain's art,  
His teeming brain, his ranc'rous heart,  
Great Shakespeare to unfold,  
*Iago's* horrid portrait draws,  
In breach of friendship's sacred laws  
And fiend-like malice bold.

His muse, assuming humour's guise,  
Laughs at *Paroles*, and blinds his eyes  
While he betrays his lord;  
A liar, coward, braggart vain,  
The soldier's scorn, of arms the stain,  
A scoundrel on record!

Our *Editor* the poet's page  
 Illustrates, and to teach the age  
 A truth but little known,  
 That two such characters may meet,  
 And in one bosom fix their seat,  
 Unites them in his own."

In addition to minor writings<sup>1</sup> Hawkins produced two books from which he might have hoped for literary fame, and he saw them both fail. The harder case was that of his *History of Music*. He had long been engaged in collecting authorities; he had acquired further materials from Dr. Gostling, "a living depository of musical history and anecdote"; he had spent infinite pains on the book, taking an engraver to Oxford to copy portraits in the Music School, had been indefatigable in research, had declined an offer to bring him into Parliament lest it should interfere with his task; and, if not a proficient musician, he had the knowledge of a lifelong amateur of music. Dr. Burney's book to which Hawkins was a subscriber—or, at least, its first volume—appeared in the same year, better written and inspired by a more exact knowledge of the art, but much inferior, according to modern opinion, in accuracy and research, and in matters interesting to the antiquary and man of letters. It has never been thought worth while to reprint Burney's book, but the wits of 1776 decided without hesitation in his favour. Perhaps it would be more correct to say that they voted against Hawkins. Led by George Steevens they made a set at his book. The malice of the "witlings and critics," we are told, "prevailed so effectually for some time that people who had any

<sup>1</sup> He edited very successfully *The Complete Angler*, wrote on Heraldry, *An Account of the Academy of Antient Music*, and published by request of his brother justices a charge to the Grand Jury, which may be compared with the tract Fielding produced on the same theme.

regard for their reputation were ashamed to own the book or know anything of it." Dr. Johnson declared that the simultaneous publication of the two histories would not be injurious; some would buy one and some the other, they would compare them, and so a talk would be made about the thing, and the books would be sold. For a time, at least, honest Payne, the bookseller who published Hawkins's History, did not find this cheerful forecast very accurate. The magazines set upon the author. A catch set to music by Dr. Calcott recorded the popular view:—

"Have you Sir John Hawkins' History?  
Some folks think it quite a mystery.  
Musick filled his wondrous brain.  
How d'ye like him? is it plain?  
Both I've read and must agree  
That Burney's history pleases me!"

which, we are told, with artful humour in performance is made to sound:—

"Sir John Hawkins?  
Burn his history!  
How d'ye like him?  
Burn his history!  
Burney's history pleases me!"

History has reversed the witlings' judgment; Burney's book is forgotten, Hawkins's has been reprinted with additions from the author's manuscript notes in his own copy. Even in his own times Hawkins was not entirely without praise; he was able to write to a friend that the book had made its way into the best libraries in the kingdom. Walpole, who had suggested the book, and written to Sir Horace Mann to procure materials for Hawkins, wrote on December

3, 1776, "I have been three days at Strawberry, and have not seen a creature but Sir John Hawkins's five volumes, the two last of which, thumping as they are, I literally did read in two days. They are old books to all intents and purposes, very old books; and what is new is like old books too, that is, full of minute facts that delight antiquaries: nay, if there had never been such things as parts and taste, this work would please everybody. . . . My friend, Sir John, is a matter-of-fact man, and does now and then stoop very low in quest of game. Then he is so exceedingly religious and grave as to abhor mirth, except it is printed in old black letter, and then he calls the most vulgar ballad pleasant and full of humour. He thinks nothing can be sublime but an anthem, and Handel's choruses heaven upon earth. However, he writes with great temper and good sense, and the book is a very valuable one."<sup>1</sup> Hawkins was granted an "audience of considerable length" to present his book to the King and Queen. In November 1787, he was able to write that the History, voluminous as it was, was growing scarce. The University of Oxford proposed to confer on the author the degree of LL.D., which Hawkins declined, and afterwards paid him the compliment of desiring his picture.

The picture was painted, under some protest, for Hawkins "treated such a solicitude for being remembered as foppery"; but he yielded to persuasion, and gave sittings to a young artist whose interests it was desired to promote. Hawkins's children, delighted with the prospect of having a portrait of their father, determined to subscribe to have the picture copied.

<sup>1</sup> Walpole was magnanimous enough not to resent Hawkins's action as a magistrate in preventing the production of his *Mysterious Mother*.



Lady Hawkins advised her children first to see the original. They did, and withdrew the commission; for they found their father "painted as he never looked, dressed as he never dressed, and employed as he never was employed; for he is represented smirking in a velvet coat with a volume in his hand, which certainly by its externals must be one of the last new novels then printed." The more truthful representation which Miss Hawkins prefixed to her *Anecdotes* must be the "outline taken by candlelight," which was the only thing approaching a portrait that his family possessed.

The *History of Music* delighted Charles Lamb, though he cared nothing for music, by its wealth of literary anecdote. Notwithstanding Boswell's admission that many curious facts are to be found in Hawkins's *Life of Johnson*, it cannot be contended that the author did as much to deserve success with his second book. Indeed, he treated the task lightly.

Yet it was not mere task-work; though not a worshipper, he shared the admiration of the age for the great moralist, and his daughter recorded that it was with eagerness that he bought Johnson's books. He had resolved, before the booksellers requested him, to undertake the *Life*. Returning to his family after the "severe attendance" occasioned by Johnson's illness, and subsequently by the arrangements for the funeral, Sir John declared, speaking of Johnson, for whom his admiration then "stood very high," "he has left me his executor and I will write his life." Four hours later, Strahan and Cadell came to ask him to write a biography, and to edit the collected edition of Johnson's works. Upon this task the knight entered with evident gusto:—

"The general sense of mankind, and the practice of the learned in all ages, have given a sanction to biographical history, and concurred to recommend that precept of the wise son of Sirach, in which we are exhorted to 'praise famous men, such as by their counsels and by their knowledge of learning were meet for the people, and were wise and eloquent in their instructions, and such as recited verses in writing.' In each of these faculties did the person whose history I am about to write so greatly excel, that, except for my presumption in the attempt to display his worth, the undertaking may be thought to need no apology; especially if we contemplate, together with his mental endowments, those moral qualities which distinguished him, and reflect that, in an age when literary acquisitions and scientific improvements are rated at their utmost value, he rested not in the applause which these procured him, but adorned the character of a scholar and a philosopher with that of a Christian."

The booksellers had offered Hawkins £200 in view of the necessary expenses of the work, so that he might employ an amanuensis, and turn over to him the correction of the press. This he did; his daughter, who received £40 as his secretary, supplied the reviews of books which are quoted, and Hawkins's ease contrasts unfavourably with the meticulous care Boswell gave to his great work. The manuscript, indeed, was given over to the judgment of a family council whose members, Miss Hawkins declares, were unmerciful critics. "What you would have it, make it," the author said in a mistimed quotation from Pope; and the family circle, in great good humour, promised as they received "the flying leaves" to see what they could make of it. With the *History of*

*Music* they had not dared to take such liberties, and there were times in the course of the *Life* when the author would not give way; but Miss Hawkins, looking back nearly forty years after, found her father's willingness thus to accept corrections nearly incredible.

It is not thus that masterpieces are produced; but the *Life* of Johnson, as Mr. Birrell has had the courage to declare, is a most readable book.<sup>1</sup> "Well worth reading, though prolix," was Dr. Jowett's pronouncement. Had there been no Boswell, Sir Leslie Stephen pointed out, we should have been duly grateful to Hawkins; Sir Leslie had to follow the fashion by calling the *Life* "a very dingy and distorting mirror," but he admitted that in it "we should have caught sight of a grotesque but impressive figure, an uncouth Dominie Sampson, who, without Boswell, would indeed be puzzling, but would still show touches of the familiar qualities." The mirror appears dingy, perhaps, because the maker lacked enthusiasm. Though Hawkins had a real admiration for Johnson, no biographer was ever more free from the *lues Boswelliana*; he apportions praise and blame in a judicial manner which seems odd to us who know how much greater than the biographer was the subject of his book. Hawkins realised, though insufficiently, how much of Johnson's greatness lay in his talk; he declared that Johnson's discourse was of the "didactic kind, replete with original sentiments expressed in the strongest and most correct terms"; he is enthusiastic in praise of Johnson's determination to talk his best, his wit, his store of excellent stories, his almost unequalled humour. He even made a slight collection of the great man's *dicta*, including the praise

<sup>1</sup> It has, says Miss Hawkins, "the very worst index I ever saw, and not, I can assure the reader, of my making."

of small books which may be carried to the fire and held in the hand, and the description of second marriages as the triumph of hope over experience. Distributed through the book these might have served to brighten the mirror, but Hawkins lacked Boswell's instinct for a telling paragraph, and he inserted the conversational gems, not in his *Life*, but in the *Works*. That his fairly competent and workmanlike bit of bookmaking came into comparison with a masterpiece is an instance of his persistent ill-fortune; it is not a masterpiece, but it is still "a most readable book."<sup>1</sup>

Take, for example, his account of the festivities in honour of Mrs. Lenox, a passage which would have shone even in Boswell, and one which Boswell must have been sorely tempted to borrow:—

"One evening at the club, Johnson proposed to us the celebrating the birth of Mrs. Lenox's first literary child, as he called her book, by a whole night spent in festivity. Upon his mentioning it to me, I told him

<sup>1</sup> Boswell's *Life*, said Miss Hawkins, "is a book that must always please; it is entertaining to a degree that makes my father's appear stiff, cold, and turgid; and I cannot but own that I think my father's the worst thing he ever gave to the public. That there was a time when he could have done much better I will endeavour to prove. . . . The style in which he wrote Johnson's life is not his own. . . . If the world desire the capillary painting of the Dutch school, the Dutch artist is the proper painter. My father was a devotee of Titian; Burke would have sketched with the masterly hand of a Raffaele, and the performance of the two latter, when conjointly contrasted with the former, would have exhibited the same difference as between representation and exposure: for I err grossly in judgment if I am wrong in thinking that, in the hands of his unreserved biographer, Johnson is much lowered. . . . All is told, and all has been well received, as giving a full meal to inquisitiveness; and nothing less than the satisfaction of prying curiosity has been accepted, since the feast was afforded" (*Memoirs*, i. 230, 231). Miss Hawkins herself had at times a graphic style: witness her description of Johnson when disposed to pay compliments: "In his colloquial intercourse they were studied, and therefore lost their effect; his head dipped lower; the semicircle in which it revolved was of greater extent; and his roar was deeper in its tone when he meant to be civil."



I had never sat up a whole night in my life; but he continuing to press me, and saying that I should find great delight in it, I, as did all the rest of the company, consented. The place appointed was the Devil Tavern, and there, about the hour of eight, Mrs. Lenox and her husband, and a lady of her acquaintance, as also the club, and friends to the number of near twenty, assembled. Our supper was elegant, and Johnson had directed that a magnificent hot apple-pie should make part of it, and this he would have stuck with bay-leaves, because, forsooth, Mrs. Lenox was an authoress, and had written verses; and further he had prepared for her a crown of laurel, with which, but not until he had invoked the muses by some ceremonies of his own invention, he encircled her brows. The night passed, as must be imagined, in pleasant conversation and harmless mirth, intermingled at different periods with the refreshments of coffee and tea. About five, Johnson's face shone with meridian splendour, though his drink had been only lemonade; but the far greater part of us had deserted the colours of Bacchus, and were with difficulty rallied to partake of a second refreshment of coffee, which was scarcely ended when the day began to dawn. This phenomenon began to put us in mind of our reckoning; but the waiters were all so overcome with sleep that it was two hours before we could get a bill, and it was not till near eight that the creaking of the street-door gave the signal for our departure."

Nor could Boswell at his best have given a more striking portrait of Levett than that painted with a few telling strokes by Hawkins:—

"His person was middle-sized and thin; his visage swarthy, adust and corrugated. His conversation, except on professional subjects, barren. When in deshabille he



might have been mistaken for an alchemist, whose complexion had suffered from the fumes of the crucible, and whose clothes had suffered from the sparks of the furnace."

Whether the book was good or no, the critics again fell upon Hawkins most mercilessly. "Boswell and Co. will torture the poor knight, half an inch at a time, to literary death," wrote Sir Herbert Croft. "I would not be the knight, even for his coach and horses, which he seems to prize so much." "Poor Sir John Hawkins, I am told, is pulled all to pieces in the *Review*," said Dr. Lort. A hostile criticism, the work of Porson, was continued through three numbers of the *Gentleman's Magazine*, under the title of *Hawkins v. Johnson*; errors of the press were treated as Hawkins's emendations; all the personal references to Hawkins were collected with the *My's* and *I's* printed in capitals. The critic even burst into rhyme:—

"Read Hawkins once and you can read no more,  
For all books else appear so mean and poor;  
Johnson's a dunce; but still persist to read,  
And Hawkins will be all the books you need."

The charge of egotism Hawkins had anticipated, and had met with some dignity. "By the office I have undertaken I stand engaged to relate facts to which I was a witness, conversations in which I was a party, and to record memorable sayings uttered only to myself. Whoever attends to these circumstances must, besides the disgust which such an affectation of humility would excite, be convinced that, in some instances, the avoidance of egotisms had been extremely difficult and in many impossible."

The passage in Porson's review which had most success was one in which he hit the taste of the town

by his famous suggestion that Hawkins had stolen Johnson's watch from Johnson's black servant. This he made in the guise of a "printed octavo leaf," being a sheet of Hawkins's book, rejected by the author and picked up in the street. Hawkins is made to declare that he had purported to buy the watch cheap, as valued by his own jeweller, but "there being in the people of this country a general propensity to humanity, notwithstanding all my exertions to counteract the same," his co-executors had compelled him to return it. The essay seems to one reader at least a somewhat elementary exercise in irony, but it has won high praise. Dr. Birkbeck Hill reprinted it; Sir Leslie Stephen considered it "stinging ridicule"; while Mr. Seccombe declares that it "has rarely been surpassed." Rarely can so much reputation have been gained by calling an unpopular old man a thief.

Sir John's own view of humanity was not so favourable as to conciliate the critics. The uncharitable "cast" in the *Life*, of which Boswell complained (Malone would have had it "malignancy"), might more truly be ascribed to his views of other men than Johnson. He looked out on the world and found it bad; or, at least, not growing better. In 1786 he wrote to Bishop Percy a long letter on the evils he saw around him:—

"The spirit of luxury rages here with greater violence than ever.<sup>1</sup> The bonds of society are dissolved; laws are infringed as soon as enacted; the coin of the realm is counterfeited and adulterated to a degree never known; places of public diversion are daily increasing; the great articles of trade in the

<sup>1</sup> Fielding, thirty-five years earlier, had denounced the vast torrent of luxury which had then of late years poured itself into the nation.

metropolis are superfluities; mock-plate, toys, perfumery, millinery, prints, and music; so that were you to be here and pass from Charing Cross to the Exchange, you would be astonished at the different appearance London makes from that it did ten years ago.

“Besides this, the sense of religion appears to be nearly extinct among us; few, except the Methodists, pretend to it; and the middle rank of the people, formerly esteemed the most virtuous, have contracted the habits of the upper. . . . Rapine and plunder have made every kind of property insecure. . . . The judges are tired of pronouncing sentence on capital offenders, executions yearly increase in numbers; and at this time upwards of a thousand offenders are consigned to banishment.”

It is not an unwonted thing that an old man looks on the world with reproofing eyes, not surprising that a magistrate, viewing life with the criminal courts ever in the foreground, should form too unfavourable a view of mankind. Hawkins thought, as did Fielding, who surely was not wanting in humanity, that in view of the many chances a criminal had of escape from justice, sentences should be carried out when convictions were obtained—a view which seems the more austere when we recall what the criminal law then was, but was not unnatural in a chairman of Quarter Sessions. He had the reputation of a hard magistrate; even his fellow-justices begged him not to be severe. Miss Hawkins tells the story of one such application. “There was on the bench at the time when my father was chairman of Quarter Sessions, a very lordly sort of man, an apothecary in the east quarter of the town, who took upon him very im-

properly a sort of moderatorship, if I may make such a word, and having himself very little command of his temper, would advise Sir John to keep his—an unnecessary counsel; for my father was not at all prone to anger. Some coal-heavers, who had committed terrible excesses amounting to riot, were to be tried, and Mr. P., warning my father as usual on such an occasion, my father jocularly said, ‘Well, then! since you cannot trust *me*, admonish them yourself.’ Proud of the deputation, he began, ‘You fellows there, that stand with halters about your necks’—he paused, as if to give time for effect. ‘Well,’ said my father in a low voice, ‘I think *I* should hardly have said more, but pray go on.’ He could not, and my father then spoke in his deliberate coolness.”

“One rather guesses,” said Sir Leslie Stephen, in a relenting mood, “that, after all,” Hawkins “was nothing worse than an unusually dull, censorious, and self-righteous specimen of the British middle-class of his time.” One rather guesses that but for the hostility of the wits Hawkins would have appeared to us as not unduly censorious or self-righteous, or at all dull. Against the common judgment it is fair to set that of Walpole, “a most inoffensive and good being,” and that of his daughter, “one whose mind habitually, even from his earliest years, preferred ‘whatsoever things are pure and of good report’; whose pursuits and associations were such as he could not only excuse, but might have exulted in; who made the most of his talents for his own fair advantage and the benefit of the world; and whose greatest faults, I believe, were some degree of prejudice and stiffness of opinion, which opinion was in itself seldom wrong in its foundation.” If this criticism be too indulgent, we may at least say that

Hawkins succeeded in most things he attempted, that he did excellent journeyman work in literature, if no more, was a loyal friend, a diligent public servant. The eulogist in Chalmers's *Biographical Dictionary* found it possible to declare further that he was "a sincere Christian (as notwithstanding the calumnies of his enemies can be abundantly testified by the evidence of many persons now living) and rich in the friendship and esteem of many of the first characters for rank, worth, and abilities of the age in which he lived."

If self-righteous, he was neither conceited nor vain. The memorial inscription, carved by his own direction on the stone in the cloisters of Westminster Abbey which covered his remains, was merely "J. H." But even here his habitual ill-fortune attended him. Some one wrote, in imitation of his drawl—

"Here lies Sir John Hawkins  
Without his shoes and stauckins,"

and this is the epitaph, so full of point and apposite-ness, which is quoted whenever Hawkins's name is mentioned. So do the wits triumph over plain men.





## THE ATTORNEY AS BUTT

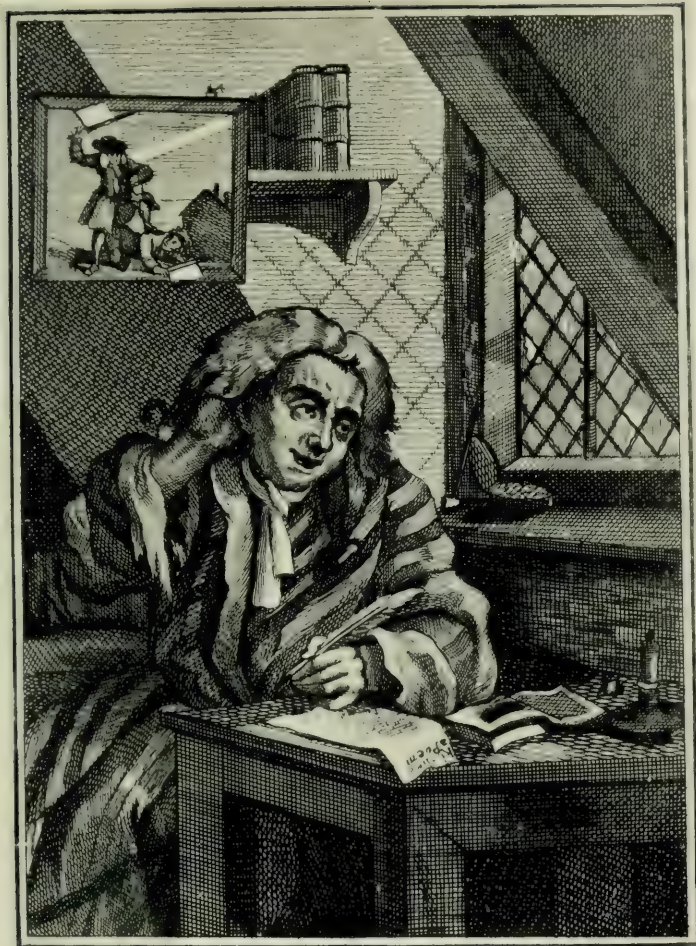
### THEOBALD

LEWIS THEOBALD was the most luckless of men of letters. Indefatigably industrious, a widely-read scholar, a really great editor, he has for more than a century and a half been universally held a dullard and a dunce—nay, the very type of ignorance and dulness. This hapless fate he owes to the malignity of Pope. As the hero—soon dethroned—of the *Dunciad*, as the butt of some of the best-known couplets in the language, poor Theobald has not been suffered even to obtain oblivion. From one critic to another, through each succeeding handbook of literature, his name has been handed down in an evil immortality. Only of late years, in the very able and striking vindication by the late Professor Churton Collins, entitled “The Porson of Shakesperean Criticism,”<sup>1</sup> and subsequently in the learned and elaborate volume by Professor Lounsbury,<sup>2</sup> has some belated reparation been made.

Theobald was a Man of Kent, born at Sittingbourne in the year of the great Revolution, the son, we are told, of a respectable attorney: so early were invidious distinctions drawn in the profession. Like his father, Lewis Theobald followed the law. It is said, indeed,

<sup>1</sup> *Essays and Studies*, 1896.

<sup>2</sup> *The First Editors of Shakespeare* (Pope and Theobald), 1906.



THEOBALD

*From Hogarth's "Distressed Poet"*



that he abandoned law for literature, and it may have been he whom Pope described as

“A Clerk, foredoom’d his father’s soul to cross,  
Who pens a Stanza, when he should *engross*.”

If so, it was the least unkind thing the prosperous poet ever said of the poor one. Allusions to Theobald’s calling were not rare in the controversies in which he was involved. So the Rev. James Miller said:<sup>1</sup>—

“T——d a Petty-fogger might have made,  
And been perhaps a Dapster at his Trade.  
Th’ indifferent Lawyer is the most in vogue  
And still the greater, as the greater Rogue.  
But middling Poets are by all accurst,  
We only listen to the Best or—*Worst*.”

The world has not listened carefully to Mr. Miller. Mallet, another ally of Pope’s, said of Theobald in his delicate way—

“By living clients hopeless now of bread  
He pettifogs a scrap from authors dead.”<sup>2</sup>

But though it is likely Theobald had but little practice, yet as we find him described as solicitor for Wycherley’s executor, it seems he was at least willing to keep to the law, if it would have kept him, and continued to practise his profession. Indeed, he wrote to Warburton in March 1729, “it has happened, unluckily, that I have been more fatigued with Law business than the present crisis of my affairs made desirable.” The “crisis” was, perhaps, his immersion in his contemplated edition of Shakespeare. In November of the same year he declared that “nothing but the most pressing inter-

<sup>1</sup> *Harlequin-Horace; or the Art of Modern Poetry*. London: 1731.

<sup>2</sup> In his *Verbal Criticism*. Theobald’s reply was a quotation from Falstaff: “His wit is as thick as Tewkesbury mustard; there is no more conceit in him than in a Mallet.”

position of hated business" should break into his correspondence with Warburton on this theme. In any case, it is clear that his interest was literature;<sup>1</sup> and there were few branches of literature he did not attempt. By the time he was twenty he had published an ode on the union of England and Scotland, and a tragedy, *The Persian Princess*, had been accepted and performed at Drury Lane. Later, he published translations from Plato, Aristophanes, and Sophocles<sup>2</sup>—very meritorious translations they are, says Professor Collins—wrote criticism, biography, romance, essays and poetry, and produced plays of all kinds, tragedy, comedy, opera, masque, pantomime. These brought him little fame. The poetry, not always called bad, was, says Professor Lounsbury, spoken of with respect until Pope fell foul of its author. No line of his is remembered, except the unfortunate "none but himself can be his parallel," which, undoubtedly absurd as mathematics, might perhaps, in a great poet, have been considered a fine poetic fancy.<sup>3</sup> Nor did his own works bring him money; his whole life was a struggle against the eternal want of pence. Impecuniosity was the least

<sup>1</sup> So Pope's enemy, Dennis, who was once Theobald's also, described Theobald as "a notorious idiot, one hight Whachum, who, from an under spurleather to the law, is become an under-strapper to the play-house."

<sup>2</sup> Hence in the *Dunciad*, "a little Ajax tops the spire." For translating the *Phaedo*, Theobald, according to Lintot's account-book, received £5, 7s. 6d., for Æschylus' tragedies, £1, 1s. 6d., being part of ten guineas, and for La Motte's Homer, £3, 4s. 6d. In 1714 he agreed to translate the *Odyssey* into blank verse, and four tragedies of Sophocles, and supply explanatory notes, at the rate of £2, 10s. for every four hundred and fifty Greek verses; the Satires and Epistles of Horace were also to be translated into English rhyme at the rate of £1, 1s. 6d. for every hundred and twenty Latin lines.

<sup>3</sup> It is characteristic of Theobald's ill-fortune that the reputation of absurdity has been fixed upon him by a line, which was probably not his, and which is, the learned tell us, imitated almost literally from Seneca.



fault his enemies found in him. He had written a poem, "The Cave of Poverty," and Pope hinted that he was well qualified to celebrate the goddess and describe her cave. Mallet's sneer has been quoted. "He wanted money," said Warburton. Pope, contemplating with satisfaction his own virtues, declared himself so humble, he "had knocked at Tibbald's door," a door in Wyan's Court, Bloomsbury, doubtless a less eligible residential district than Twickenham.<sup>1</sup> Theobald, as Pope said with enjoyment, "was never an author in fashion, or caressed by the great." Pope suggested, too, that the poor dramatist had asked him for his "friendship and a prologue and ten pound." Theobald replied that the favours he had asked of Pope were two; on one occasion he had sent tickets for his benefit thinking Pope might take a few, and he received the packet back with regrets that it had not reached the poet until too late. Encouraged by this, he suggested that Pope would perhaps recommend his "Proposals" for a translation of *Æschylus* if they did not interfere with Pope's own *Odyssey*; Pope expressed his pleasure that Theobald had undertaken the work and promised to solicit his friends for subscriptions, but in fact procured none. Once, indeed, Theobald was more fortunate, Lord Orrery presenting him with a hundred pound note, "enclosed in an Egyptian pebble snuff box," in return for a dedication of a version of *Richard II.* This gleam of fortune gilded Grub Street but for a moment; and Theobald's general poverty was suffi-

<sup>1</sup> Professor Lounsbury thinks that Theobald's poverty has been exaggerated, though he was undoubtedly poor and at times in pecuniary straits. "A continuous residence," he says, "for at least a score of years in a quarter of London not given over to the poverty-stricken, must have demanded a fairly regular income, no matter how small."

cient for Hogarth to take him, it is said, as his model for "The Distressed Poet."

But the plays, by familiarising the author with the ways of the theatre, may have been of service in training Theobald for the real work of his life, the editing of Shakespeare, the emendation and restoration of the text of the poet. That text, says Professor Collins (and one can do nothing in speaking of Theobald but quote from Professor Collins's memorable article), "now so intelligible and lucid," Theobald found in a deplorable condition. Theobald himself called it "horrid" and "mangled," while Warburton declared it "disguised and travestied . . . left to the care of door-keepers and prompters;" and Theobald "contributed more to its certain and permanent settlement than all the other editors from Rowe to Alexander Dyce. . . . It may be said with simple truth that no poet in our own or any language has ever owed so great a debt to an editor as Shakespeare owes to this man."

Theobald's qualifications for his task were quite exceptional. He had "a fine ear for the rhythm of blank verse and the nicest sense of the nuances of language as well in relation to single words as in combination. . . . In every department of textual criticism he excelled. In the humble offices, in collation, in transcription, in the correction of clerical errors he was, as all his enemies have freely admitted, the most patient and conscientious of drudges. To the elucidation of obscurities in expression or allusion, and for the purpose of illustrative commentary generally, he brought a stock of learning such as has never, perhaps, been found united in any other commentator on Shakespeare. An accomplished Greek scholar, as his translations . . . as well as his emendations from Æschylus,

Suidas, Athenæus, Hesychius, and others abundantly prove, his acquaintance with Greek literature was intimate and extensive. His notes teem with most apposite illustrations drawn not merely from the writings with which all scholars are more or less familiar, but from the fragments of Menander and Philemon, from the *Anthology*, and from the miscellaneous literature of Alexandria and Byzantium. His illustrations from the Roman classics—and they range from Ennius to Boethius—are still more numerous. He appears to have been well versed also in Italian, French, and Spanish, an accomplishment which assisted him greatly in his work as an editor and commentator. It not only supplied him with many happy parallels and illustrations, but it enabled him to trace many legends and traditions to their source, and, what was more important, it enabled him to correct the gibberish into which words in these languages, or unnaturalised words derived from these languages, were almost invariably transformed in the text of the quartos and folios.”<sup>1</sup>

His familiarity with English literature was equally serviceable. He knew Chaucer and Spenser thoroughly, he had read over all available old English plays for purposes of comparison, and he collated the plays with the sources from which Shakespeare drew his materials, the historical plays with Holinshed, the Roman with North’s *Plutarch*. In all these he found matter not only for correcting the text, but for explanation and comment. His knowledge of the controversial religious literature and the swarming pamphlets of Elizabethan times was useful in enabling him to explain temporary or local allusions. From the State trials, *e.g.*, he learned that the line in *Twelfth Night*

<sup>1</sup> *Essays and Studies*, pp. 276, 277.

(iii. 2) "If thou thou'st him some thrice it shall not be amiss," refers to Coke's outburst in prosecuting Sir Walter Raleigh; "all that he did was by thy instigation, *thou* Viper, for I *thou* thee, *thou* Traitor." Nor did his qualifications end here. "It was not," says Professor Collins, "what industry, acquired learning, good taste, and sound judgment enabled him to do, that gives him his peculiar place among the critics. It was the possession in the highest degree of that fine and rare faculty, if it be not rather an exquisite temper and harmony of various faculties, which seems to admit a critic for a moment into the very sanctuary of genius."

It is small wonder that the *Shakespeare* edited by such a man was valuable. Professor Collins gave a long list of his happy emendations. One, indeed, has become famous. The well-known description of Falstaff's death by Mistress Quickly contained the meaningless line, "his nose was as sharp as a pen and a table of green fields." It is to Theobald we owe the brilliant suggestion, "'a babbled of green fields," which gives a touch of pathos to the gross rascal's end, and by a flash reveals the dying man's mind back in memories of childhood and muttering in delirium the psalm learned at his mother's knee.<sup>1</sup> He ever laboured, Theobald said, to make the smallest deviations he could possibly from the text, and never to alter at all where he could by any means explain a passage into sense. "Mending nonsense into doubtful meaning," was Mallet's commentary, as if it were better to leave a passage unintelligible than to restore it to

<sup>1</sup> Pope's treatment of the passage was characteristic. The puzzling words were, he said, a stage direction; a table was to be brought in, and Greenfield was the name of the (imaginary) property-man who was to bring it.—*Lounsbury*, p. 163.

possible correctness. Many instances of sense restored by amended punctuation might be given. Dr. Johnson, finding the text so elucidated, ridiculed Theobald for the panegyrics which, he says, the editor bestowed on his corrections. A specimen of the emendations Theobald sought occurs in *Richard III.* (iv. 4):—

“Advantaging his loan with interest  
Oftentimes double gain of happiness ;”

where Theobald printed the second line,

“Of ten times double gain of happiness.”

In the *Second Part of Henry IV.* (iii. 2) he found

“To sit and watch me as Ascanius did  
When he to madding Dido would unfold  
His father’s acts,”

and by altering a single letter made the fourth word *witch*. His knowledge of words fallen into desuetude enabled him to restore the true reading in the passage (*Measure for Measure*, iv. 2) “You shall find me *y’are*,” which being unintelligible had been altered to *yours*, and read *yare*, i.e. ready. The weird sisters in *Macbeth* were “weyward” sisters till Theobald wrote; Caius’s “*Baillez me some paper*” (*Merry Wives*, i. 4) had been *ballow me*; the *scotch’d* snake in *Macbeth* was *scorch’d*. The first line of Ariel’s song ran “where the bee sucks there *suck* I,” until Theobald substituted *lurk*, and the fourth was “after *summer* merrily” until he changed the word to *sunset*. From the song “What shall he have that kill’d the deer?” he removed the stage direction, “the rest shall bear this burden,” which had been incorporated in the text. In *Love’s Labour’s Lost*, for the unintelligible line

“This Signior Junio, giant dwarf, Dan Cupid,”



he happily substituted

“This senior-junior, giant-dwarf, Dan Cupid.”

In *Antony and Cleopatra* (i. 4) the text read

“Like to a Vagabond Flagge upon the Streame  
Goes too, and backe, lacking the varrying tyde.”

Theobald altered the second line to

“Goes to and back lacqueying the varying tide;”

and a pointless passage in *Twelfth Night* (i. 3)

*Sir Andrew.* Would that have mended thy hair?

*Sir Toby.* Past question, for thou-see'st it will not *cool my nature.*

was made sense by Theobald's correction *curl by nature.*

Many more instances might be cited. Even when his emendation at first seems doubtful, the instances he gives of use of the same words by Shakespeare's contemporaries, and especially by Shakespeare himself, constantly carry conviction. A natural shrewdness and feeling for poetry might, perhaps, have solved many of the enigmas; but only Theobald's wide reading and inquiry could have explained obscure allusions: as to the roses on old coins, or the reference in *Twelfth Night*—

“Why should I not, had I the heart to do't,  
Like to an Egyptian thief at point of death  
Kill what I love?”

which he explains by a quotation from Heliodorus, or the allusion to Hiren (2 *Hen. IV.*, ii. 4), the sword of Amadis du Gaul. Even now the elucidation for the first time of these and many other references would be no small matter; it can easily be con-

jectured how much labour was involved in the less advanced state of index-learning, the absence of public libraries, and of all the modern aids to scholarship.<sup>1</sup>

Before Theobald's edition appeared or, indeed, was contemplated, he had given a taste of his quality in *Shakespeare Restored*, a criticism of Pope's edition, in which he pointed out the numerous errors of which that careless editor had been guilty. That was his offence. For that, as Professor Lounsbury says, he was followed "for years with an activity that never slept and a malignity that never tired." For that he found himself in the *Dunciad*, where, he said, "Mr. Pope, not being able to be a Fountain of Honour to mankind, made himself a Fountain of Infamy, and pleased himself with dealing out a fund of dirty promotions from that inexhaustible spring." For that alone he was pilloried. The instances of provocation which Pope gave as justification for the *Dunciad* are, as regards Theobald, few, and the evidence of Theobald's authorship singularly slight. We may say, as Macaulay said of his accusation against Addison, "We have not the smallest doubt that he believed it to be true; and the evidence on which he believed it he found in his own bad heart." Before the Shakespearean controversy Theobald had given Pope high praise. Even in *Shakespeare Restored* he had treated him personally with respect, though he said later, quite truly, that Pope forgot to discharge the "dull duty" of an editor. Pope's revenge was to appropriate Theobald's

<sup>1</sup> He could not procure the First Folio from the booksellers, but afterwards obtained a copy from a friend; for years he sought unsuccessfully for Ascham's *Toxophilus*; he had heard of Lodge's *Rosalynde*, which he supposed to be a volume of poems, and, of course, desired to obtain it in connection with *As You Like It*, but never succeeded. "Information in the reach of every one now was then hardly accessible to any one."—*Lounsbury*, p. 495.

labours in a later edition, and to proclaim Theobald a dunce, and with him all careful editors, whose work, he seemed to suggest, was below the dignity of letters. He himself undertook the editing of Shakespeare, so he professed, "merely because nobody else would."

"Pains, reading, study are their just pretence,  
And all they want is spirit, taste, and sense.  
Commas and points they set exactly right,  
And 'twere a sin to rob them of their mite.  
Yet ne'er one sprig of laurel graced these ribalds  
From slashing Bentley down to piddling Tibbalds :  
Each wight, who reads not, and but scans and spells,  
Each word-catcher who lives on syllables. . . ."

Shakespeare was "hapless," and "of Tibbald sore," because Theobald had been his editor. Theobald had "crucified poor Shakespeare once a week" in his notes in *Mist's Journal* on Shakespearean passages.<sup>1</sup> Pope was especially severe on Theobald's having restored the old puns in his author, and the "low conundrums." Theobald not unnaturally supposed it an editor's duty to print the puns as Shakespeare wrote them, and explain the points that time had hidden. Hence Mallet also wrote that he would

"Turn Caxton, Winkin, each old Goth and Hun,  
To rectify the meaning of a pun."

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<sup>1</sup> This, Professor Lounsbury points out, is one of Pope's misstatements which have been accepted even by those who know how unreliable Pope's statements often were. So far from Theobald irritating the poet by contributing corrections to *Mist's Journal* once a week, his contributions on this subject, direct and indirect, "amounted to precisely two."—*The Text of Shakespeare*, p. 338. The club which Pope said held constant weekly meetings to assail him was purely imaginary (p. 305). *The Dunciad* originally was a mere incident in Shakespearean controversy. Its opening line read in the first edition,

"Book and the man I sing,"

the book being *Shakespeare Restored*, but Pope soon saw it was not wise to call too much attention to a matter in which he had been palpably worsted.

This was "low industry." Yet Theobald did not value too highly these verbal facetiæ. "The genius that gives us the greatest pleasure," he wrote, "sometimes stands in need of our indulgence. Whenever this happens with regard to Shakespeare I would willingly impute it to a vice of his times. . . . His clinches, false wit, and descending beneath himself, seem a deference paid to a reigning barbarism."<sup>1</sup> Where the text was obscure he took infinite pains to discover the true reading. When the sense was clear and discoverable, Theobald declared, though perchance low and trivial, he would not tamper with the text out of an ostentation of endeavouring to make his author speak better than the old copies had done.

Pope greatly underestimated, or understated, Theobald's qualifications for his work:—

"How with less reading than makes felons 'scape,  
 Less human genius than God gives an ape,  
 Small thanks to France and none to Rome or Greece,  
 A past, vamp'd, future, old, revived new piece  
 'Twixt Plautus, Fletcher, Shakespeare and Corneille  
 Can make a Cibber, Tibbald, or Ozell."

This, perhaps, was pointed rather at Theobald's own plays. But there is no mistaking the intention of another passage, or its audacity, when we recall Pope's habit, where he did not understand what Shakespeare had said, or had been made by the printers to say, of

<sup>1</sup> Dr. Johnson was much more severe. "A quibble gave Shakespeare such delight," he said, "that he was content to purchase it, by the sacrifice of reason, propriety, and truth. A quibble was to him the fatal Cleopatra for which he lost the world, and was content to lose it." Addison more tolerantly said that in Jacobean times "the greatest authors, in their most serious works, made frequent use of puns. The sermons of Bishop Andrews, and the tragedies of Shakespear, are full of them. The sinner was punned into repentance by the former, as in the latter nothing is more usual than to see a hero weeping and quibbling for a dozen lines together."

inserting what Pope thought Shakespeare should have said : —

“Let standard authors thus, like trophies borne,  
Appear more glorious as more hack'd and torn.  
And you, my critics ! in the chequer'd shade,  
Admire new light through holes yourselves have made.”

Nor is there any doubt who it was who was accused of turning poets' verse to prose, or who would

“ . . . explain a thing till all men doubt it,  
Or write about it, goddess, and about it.”

And lest the victim's calling should be forgotten it was archly mentioned in the couplet :—

“But what can I ? My Flaccus cast aside,  
Take up th' *Attorney's* (once my better) *Guide* ?”

The *Dunciad* and the *Epistle to Dr. Arbuthnot* were not Pope's only attacks on Theobald. Besides these, the unlucky critic was made the subject of an epigram “inscribed to Attorney Tibbald” “on Mr. Moore's going to law with Mr. Gilliver,” the publisher :—

“Once in his life Moore judges right :  
His sword and pen not worth a straw,  
An author that could never write  
A gentleman that dares not fight ;  
Has but one way to tease—by law.  
This suit, dear Tibbald, kindly hatch ;  
Thus thou may'st help the sneaking elf ;  
And sure a printer is his match  
Who's but a publisher himself.”

Pope had many ways of teasing, and he did not disdain to tease by law, but on another occasion he adopted the bolder method of the highwayman. Theobald, solicitor for and friend of Captain Shrimpton, who married Wycherley's widow, edited the “remains” of



the dramatist, announcing that the volume contained only a moiety of the papers available, and that the rest would follow in a short time. Pope wrote to Lord Oxford that the publication was very unfair and derogatory to Wycherley's memory and blasted his laurels, as well as being injurious to Pope himself. He called Theobald "an unlicensed and presumptuous mercenary," and he represented, untruly, that he had been charged with the "sole supervisal" of these papers. Then he brought out a volume of the dramatist's verses, issuing the book as the second volume to Theobald's first, advertised it as completing the whole, and assured the public that nothing more of Wycherley's fit for the press remained to be published. In so doing he adopted the volume he had denounced as derogatory, and, as Mr. Elwin said, "claimed a right to usurp another man's work, and in defiance of him to publish his second volume." Mr. Elwin adds that the decencies of literary usage were never more openly violated; and as Theobald was neither unlicensed nor presumptuous, the language used by Pope was "the expression of Pope's hostility to Theobald, and not of the facts." As regards the poet's relations to Theobald generally, Professor Lounsbury says "to carry out his ends there was no form of equivocation to which he would not resort, no kind of misrepresentation in which he would not indulge, no meanness of trickery to which he would not stoop."<sup>1</sup>

So far from Theobald's deriving reputation, as Dr. Johnson was to suggest, from Pope's attack on him, the sayings to his discredit were generally accepted. Pope's character has always been known. That he spoke evil of a man should have been evidence in favour

<sup>1</sup> p. 463.

of the accused; yet against Theobald he has been believed. Until lately there has been scarce a doubt that Theobald was in fact a dunce. This is largely due to the injustice done him by Dr. Johnson. Theobald, said the Great Cham, was "a man of heavy diligence and very slender powers," "a man of narrow comprehension and small acquisitions, with no native and intrinsic splendour of genius and little of the artificial light of learning, but zealous for minute accuracy and not negligent in pursuing it." The Doctor admits that "he collated the ancient copies, and rectified many errors. A man so anxiously scrupulous," he adds, "might have been expected to do more, but what he did was commonly right." Of Theobald's character, Johnson, for some reason, had but a poor opinion. "Mr. Theobald," he says, with a sneer which comes oddly from one who professed not to write except for money, "if fame be just to his memory, considered learning only as an instrument of gain, and made no further enquiry after his author's meaning, when once he had notes sufficient to embellish his page with the expected decorations." Any one who reads Theobald's correspondence, in which he frequently and anxiously recurs to points already considered and provisionally decided, will see that fame and Johnson were here far from just. Theobald's notes, the Doctor said, he had "generally retained," though he had lopped the "exuberant excrescence" of his diction and concealed his "contemptible ostentation." Johnson forgot that Theobald's edition was his reply to the *Dunciad*, and that it would have been more than human not to point out his satirist's errors. The editor whose notes Johnson "generally retained" is thus dismissed:—

"Theobald, thus weak and ignorant, thus mean and faithless, thus petulant and ostentatious, by the good luck of having Pope for his enemy, has escaped and escaped alone, with reputation, from this undertaking. So willingly does the world support those who solicit favour against those who command reverence; and so easily is he praised whom no man can envy."

This, as Charles Knight declared,<sup>1</sup> is mere "fine writing"; but the opinion, whether adopted from carelessness or love of a sonorous sentence, remained Johnson's final judgment and was repeated in his talk. Warburton, he said, would make two and fifty Theobalds cut into slices.<sup>2</sup>

This estimate, or something like it, has been constantly repeated and the student has been taught, in manuals and even in encyclopædias, that Theobald was in truth a dunce, and "ignorance continues what malice originated." Warton described him as "a cold, plodding, and tasteless writer and critic who with great propriety was chosen" as the hero of the *Dunciad*. Mr. Courthope whole-heartedly declares that he had "no disqualification for the throne of Dulness except his insignificance." Professor A. W. Ward<sup>3</sup> dismissed Theobald as "a plodding antiquary," and "upon the whole a very suitable hero for a Duncce-epic"; "less injustice was done to him by the selection of his well-worn name than by Dryden to the worthy Flecknoe." "What is Tibbalds to us far down in the nineteenth century?" asked Mrs. Oliphant,<sup>4</sup> and replied, "merely a fly in the amber

<sup>1</sup> *History of Opinion on the Writings of Shakespear*, p. 132.

<sup>2</sup> The judgment has in it something of ingratitude as well as injustice, for it was with a folio Shakespeare which had been Theobald's copy that Johnson performed his celebrated feat of knocking down a bookseller.

<sup>3</sup> *Globe Edition of Pope*, pp. 350, 351.

<sup>4</sup> *Historical Sketches of the Reign of George the Second*, p. 199.

of Pope's verse." Mr. Cecil Headlam<sup>1</sup> argues that satirical criticism serves a useful purpose when it ridicules "the dulness that boasts itself to be somewhat," and declares that the type that Theobald represented in the *Dunciad* is still with us, though he robs his remark of some piquancy by withholding the names. Mr. Edmund Gosse,<sup>2</sup> admitting that Theobald's edition was more scholarly than Pope's, yet said Theobald might claim to be both dull and a dunce. Sir Leslie Stephen<sup>3</sup> hesitated; he said that merits have been ascribed to Theobald, but that Pope regarded him as a grovelling antiquarian, and that *as such* he was a fit pretender enough to the throne once occupied by Settle. No one, of course, can be a specialist on every subject; opinion must often be adopted from others. What is astonishing is that all the critics accepted their judgments ready-made, and made by a party to the contest.

These judgments should have been contradicted by the men best able to judge Theobald's merits, the succeeding editors of Shakespeare. But they, like the others, have accepted what Pope and Johnson said. "Indeed," says Professor Collins, "the shamelessness of the injustice with which he has been treated by his brother commentators on Shakespeare exceeds belief. After plundering his notes and appropriating his emendations, sometimes with, but more generally without acknowledgment, they all contrive, each in his own fashion, to reproduce Pope's portrait of him." Pope

<sup>1</sup> *Selections from the British Satirists*, p. 45.

<sup>2</sup> *Eighteenth Century Literature*, p. 124. Perhaps the words are used with the very special meaning Pope forced upon them. Every one whom he disliked became *ipso facto* a dunce. Dulness, as De Quincey euphemistically put it, in Pope's sense included "any defective equilibrium between the faculties."

<sup>3</sup> *English Men of Letters: Pope*, p. 121.



himself in a second edition coolly stole the result of Theobald's labours, and said in a note, "there having been some attempts upon Shakespeare, published by Lewis Theobald . . . we have inserted in this impression as many of 'em as are judged of any the least importance to the Poet—the whole amounting to about twenty-five words." This is "a gross misrepresentation," says Professor Collins; Theobald more gently said "veracity is strained so an injury might be done."<sup>1</sup> Warburton, who followed, was worse. Warburton, then unknown to Pope or fame, had been a friend of Theobald's.<sup>2</sup> They had become acquainted at the time when the cleric had not long ceased to contemplate being an attorney, and though now a clergyman had not many years finished his service under articles. To Warburton Theobald submitted all his criticisms and suggestions in a correspondence which he said awoke in him the ardour and delight of love letters. Warburton replied with proposed emendations, of which, says Professor Collins, "there are not half-a-dozen which are not either superfluous or execrable." By the time Warburton turned editor he had become a friend of Pope's, and, to quote again, "it is to be hoped for the honour of human nature that there are few parallels to the meanness and baseness of which Warburton stands convicted." He said that Theobald suc-

<sup>1</sup> It has to be admitted that Theobald adopted, generally, though not always without acknowledgment, many of Pope's emendations. It was the fashion among early editors. But Theobald was so scrupulous in recording indebtedness to others that his omission to do so in Pope's case, whatever the provocation, was unjust.

<sup>2</sup> He made Theobald's acquaintance when the *Shakespeare Restored* had given Theobald reputation as a Shakespearean scholar. When later he desired to disown acquaintance with Theobald, he said that as the man wanted money he let him use his notes on Shakespeare. In 1734 he was addressing him as "My dear Friend" and "Dearest Friend," and sending compliments to Theobald's wife and son; while years before he had thanked Concanen for his introduction to Theobald.



ceeded so ill that "he left his author in a worse state than he found him." In 1734 he had written enclosing some criticisms on particular passages, and added, "it is no small compliment to your edition, for I have been so exact in my inquisitorial search after faults, that I dare undertake to defend every note throughout the whole bulky work save these *thirteen*." Later, Theobald being dead, he declared that what Theobald thought, "if ever he did think," he could but ill express, and that he had not common judgment or critical sagacity. Thereupon he appropriated Theobald's notes and emendations, and robbed him of the credit of his best things "by a device so despicable that it deserves notice."

Theobald had corrected the meaningless "besom concipitities" (*Coriolanus*, ii. 1) to "bisson"—half-blind—and the word *shoes* in "as great Alcides shoes upon an ass" (*John*, ii. 2) to "shows." Warburton adopted these corrections and said in a note, "*spelt* right by Mr. Theobald." He did the same with the line (*Hamlet*, v. 1), "Woo't drink up *Esile*, eat a crocodile?" in which Theobald, recalling the old word for vinegar, read *cisel*; although, as Professor Collins says, Warburton knew that the word, being printed in italics, had always been supposed to mean the name of a river.<sup>1</sup> So did the Bishop of Gloucester treat the memory of the poor scholar who had been his friend.

To Warburton succeeded Johnson, who treated him with an unfairness very unlike his generally just and generous self; and from Johnson were derived the sneers of countless critics which, aiding Pope's efforts, have preserved the name of Theobald as a buffoon of letters, the butt of the wits. These things Theobald

<sup>1</sup> Theobald himself had at first been inclined to identify the river with the Yssel.

did not live to know ; it was enough, even for a man so unlucky as Theobald, to feel the point of Pope's stiletto, to be the mark of his wounded vanity and malice. He saw himself in turn hailed as King of Dulness, and then dethroned, and as "a certain pretender, pseudo-poet, or phantom" bid utterly to vanish and evaporate out of the book. The true note of insolence fashionable among Pope's allies in speaking of Theobald is echoed in the anonymous *Shakespeare in the Shades*,<sup>1</sup> in which the dramatist is made to review his editors, Rowe, Pope, and Hanmer. Theobald comes next :—

"Supported by Caxton, by Wynkin upheld,

Next Tibbald crept forward to sight :

'Is this,' quoth the poet, 'the thing that rebell'd,

And dar'd even Pope to the fight ?

'To kennel, good Tib, for a time will arrive,

When all in their senses shall know,

That half of your consequence, Tib, you derive

From the lash of so envied a foe.

'Eight hundred old plays thou declar'st thou hast read ;

How couldst thou the public so cozen ?

Yet the traces I see (spite of what thou hast said)

Of not many more than a dozen.

'If all thou hast dug, how could Farmer, my Tib,

Or Stevens find gold in the mine ?—

Thy trade of Attorney sure taught thee to fib,

And truth was no client of thine.'"

Another author, now forgotten,<sup>2</sup> showed by his title what Theobald's offence seemed to the "Popeians"—"On Scribbling against Genius"—though with an affectation of modesty he coupled himself with the critic :—

<sup>1</sup> *The Muses' Mirrour*, i. 161.

<sup>2</sup> Edward Rolle, B.D., Bell's *Fugitive Poetry*, iii. 54.

"The phlegmatic, dull, awkward, thick, gross-witted,  
 Have all some clumsy work for which they're fitted.  
 'Twas never known, in men a perfect void,  
 Ev'n I and Tibbald might be well employ'd;  
 Would we our poverty of parts survey  
 And follow as our genius led the way."

Theobald bore his unjust castigation like a gentleman and a man of sense. He was so cool, he wrote, as to his adversary's usage that he thought the public should not be too largely troubled with his grievances. Consulting with Warburton, he expressed himself anxious by all means to avoid anything which might come within the compass of anything like ill-nature. He was, of course, deeply hurt. Doubtless he asked himself, in some such words as Colley Cibber used, "Would my professing myself a Satyrist give me a title to wipe my foul Pen upon the Face of every Man I did not like?" His vexation is said to have found expression in an inscription on the fly-leaf of his enemy's book, "Lewis Theobald to Mrs. Heywood, as a testimony of his esteem, presents this book, called the *Dunciad*, and acquaints her that Mr. Pope, by the profits of its publication, saved his library, wherein unpawned much learned lumber lay." One can hardly suppose Theobald was so ignorant of Pope's means as to have written this seriously. In Theobald's published rejoinder, at least, there is dignity as well as natural resentment. He did not, like Lady Mary Wortley Montagu and Lord Hervey, reflect on Pope's deformity, "at once resemblance and disgrace" to humanity, or on the "wretched little carcass," "unstripped, unblanketed, unkick'd, unslain." Nor did he pretend to despise Pope's powers. "It is not," he said, "with any secret pleasure that I so frequently

animadvert on Mr. Pope as a critick; but there are provocations which a man can never quite forget. His libels have been thrown out with so much inveteracy, that not to dispute whether they could come from a Christian, they leave it a question whether they could come from a man. . . . The indignation, perhaps, for being represented a blockhead, may be as strong in us as it is in the ladies for a reflection on their beauties. It is certain I am indebted to him for some flagrant civilities; and I shall willingly devote a part of my life to the honest endeavour of quitting scores; with this exception, however, that I will not return these civilities in his peculiar strain, but confine myself to the limits of common decency. I shall ever think it better to want art than to want humanity; and impartial posterity may, perhaps, be of my opinion."

That Theobald ever entirely quitted scores cannot be said. The "just revenge" which he sought for the *Dunciad* lay, as he saw it would, in the superiority of his *Shakespeare*, which ultimately extinguished Pope's. His edition was reprinted many times, and it is said thirteen thousand copies were sold. More striking than this was the general acceptance of his corrections of the text. Professor Collins calculates that his own conjectures, corrections, and regulations, apart from the readings he selected from the quartos and folios, are followed in no less than three hundred and nine passages in the Cambridge *Shakespeare*. Yet no reputation among scholars was secured. The pleasing belief that no man is written down save by himself is disproved by Theobald's fate. He was written down by Pope, from motives of mean and personal malignity, and down he remained for a hundred and fifty years.

He was not, indeed, entirely without witness. A ballad, "Shakespeare's Bedside," in the *Westminster Magazine* for October 1773,<sup>1</sup> representing Shakespeare as sick and his editors as his doctors, recognised, though Theobald was treated contemptuously, the superiority of his edition:—

" Next Tibbald advanced, who at best was a quack,  
And dealt but in old women's stuff;  
Yet he caused the physician of Twick'nham to pack,  
And the patient grew cheerful enough."

"A worse used man does not exist in our literature than this same poor Theobald. He was in truth the first useful commentator on Shakespeare,"<sup>2</sup> said Dr. Maginn. The editors of the Cambridge *Shakespeare* declared him incomparably superior to Pope and Warburton, and added that "many most brilliant emendations, such as could not have suggested themselves to a mere 'cold, plodding, and tasteless critic,' are due to him." In 1867 Mr. Keightley wrote<sup>3</sup> that Pope, Warburton, and Hanmer were all eclipsed by Theobald, "one of the acutest emendatory critics that this country has produced, whose merits, long clouded, through the malignity of Pope, are now fully acknowledged." In 1873 Mr. Furness spoke of "poor Theobald," who in Steevens' day "still staggered under the weight of Pope's unjust and jealous *Dunciad*." Mr. Davenport Adams<sup>4</sup> declared him a man of industry and parts, of sound judgment and good taste. But these availed little against "the obsequious parrotry of tradition," the constantly repeated opinions of guides

<sup>1</sup> As quoted in Mr. Wright's *Caricature History of the Georges*.

<sup>2</sup> *Miscellanies*, ii. 29. "Dr. Farmer's Essay on the Learning of Shakespeare Considered."

<sup>3</sup> *The Shakespeare Expositor*, p. 48.

<sup>4</sup> *Good Queen Anne*, i. 344.



and mentors who echoed the judgment of Pope, Johnson, Warburton, and the rest. It was not until Professor Churton Collins's article—one of the written things that have the force of deeds—in 1895 that Theobald's greatness was ever fully asserted. Yet it is probable that the greatness will never be generally known. The lies, as Professor Lounsbury says, have too great a start for truth to overtake them. It is the hard fortune of those who engage in controversies with great writers that their side of the case is forgotten. Pope's verses and Pope's misstatements will always be read, and to the reader his antagonist will always be a dunce.

Ten years of struggle followed the publication of Theobald's great work, though the substantial payments he received<sup>1</sup> must have relieved for a time the struggle with poverty. In 1730, on the death of Eusden, he had applied for the vacant laureateship. "The women spurred me up," he said, "to put in for the withered laurel." He was warmly recommended by Sir Robert Walpole on the introduction of Lord Gage.

"Fools find fit patrons still in every age,  
Quarles had his Benlowes, Tibbald has his Gage,"

ran Pope's comment. After "standing fair for the post at least three weeks," Theobald said, he had the mortification to see the post given to Cibber, and sagely concluded in a line from Addison that "the post of honour is a private station." But the hopes so raised were not easily dismissed. He waited on Sir Robert to thank him for his assistance, and to keep in his eye. But, he wrote to Warburton, "shall I pursue this dream of expectation, and throw away a few hours in

<sup>1</sup> According to the contract he was to have received eleven hundred guineas, and he appears to have actually been paid £652, 10s.

levee-haunting? Or will it be more wise to wake myself at once from a fruitless delusion, and look on promises but as courtiers' oratory? You will do me the justice to believe my first quest was not on the motive of vanity, but to assist my fortune. The same reason still remains, and I would fain sit down to my little studies with an easy competency. But I should be sorry to dance a vain dependence, and be rolling the stone of Sisyphus too long." The dream was vain, and Theobald was never to sit down to his studies with that easy competence which so many men of letters have desired. In May 1741 he had to issue an appeal for the "favours of the public and the assistance of his friends" at a benefit performance. Back to the old drudgery, he produced further plays, and projected and actually commenced an edition of Beaumont and Fletcher. His health failed, and though his son, who by the help of Sir Edward Walpole was appointed a clerk in the Annuity Pell office, as yet survived, he seems to have been lonely. The drama of his life, one might say, if life arranged itself with dramatic effect, was played out when his "just revenge" was accomplished.

Through a life almost wholly passed amid the quarrels and jealousies of Grub Street, two, and only two, charges affecting Theobald's personal character seem to have been made. An unsuccessful playwright, a watchmaker, named Henry Mestayer, accused him of stealing ideas from the manuscript, or rather the rough material, of a drama which had been submitted to him. Perhaps Theobald had this incident in mind when, writing of a possible charge against Shakespeare of plagiarising in *Measure for Measure* from Whetstone's *Comical Discourses*, he said, "Whoever has seen and

knows what execrable stuff they are, I am sure will acquit him." Theobald published *The Perfidious Brothers* as his own, and argued that, as he had had four months' labour and had created the play anew, he was entitled to claim it. Mestayer replied by publishing what he said was his version, which was very like Theobald's. The critic rejoined by threatening to print the original draft, but did not do so. He *may*, therefore, have been guilty. Many a man, under pressure of need, does discreditable things of which no one would have thought him capable. But nothing recorded of Theobald, save his poverty, makes it likely that he was.

The second charge, the converse of the first, was that he untruly represented a play of his own, *The Double Falsehood*, to be Shakespeare's. As Pope declared that he did not believe the play to be Theobald's, but to be certainly of Shakespeare's age, and modern critics concur, one need not regard this as very serious. Even a Shakespearean editor may without blame be mistaken as to one of the "doubtful plays." Considering how keen was the controversy in the times of the literary war between the Popeians and the Theobaldians, of which Isaac D'Israeli gives an account in the *Quarrels of Authors*, it is certain that if anything really discreditable could have been found it would not have remained unknown. It seems that Johnson's charges of meanness and faithlessness are no better supported than the ridiculous charge of ignorance.

Yet at the end one friend alone seems to have been with him, "Mr. Steede of Covent Garden Theatre." To him we owe the memorandum which is the sole record of the critic's death. "September 18, 1744, about 10 A.M., died Mr. Lewis Theobald, well known in

the polite part of the town for his edition of *Shakespeare*, and several other pieces, as Poems, Translations, Tragedies, &c." Death, it appeared, was due to jaundice, followed by dropsy, to which he succumbed without pain, "his head gently supported by one hand." Mr. Steede, at least, had no doubt of his friend's merit. "How great a philologist he was," runs the record, "his notes upon and emendations of Shakespeare will inform Posterity. He was of a generous spirit, too generous for his circumstances; and none knew how to do a handsome thing, or confer a benefit when in his power, with a better grace than himself. He was my ancient friend of near thirty years' acquaintance. Interred at Pancras, the 20th, 6 o'clock P.M. *I only attended him.*"

"Not one sprig of laurel" has the world allowed to Theobald. One is glad that he had this single leaf of rosemary.







ALEXANDER BROME

## THE ATTORNEY AS MAN OF LETTERS (I.)

BARRISTERS, of course, may woo the Muses; a flirtation is almost expected of them while yet apprentices of not more than five years' standing. The years of enforced leisure, the period of waiting for briefs—inevitable to all but the sons of judges or solicitors—the possibility of prompt fame and reward, the known benevolence of editors, a professional tradition, the cheapness of ink and paper: all these potent causes combine to compel verses and other essays in the Inns of Court. But attorneys? How should they know the sacred fire? They shelter in no studious groves, they come not of a lettered race, for them is no assured welcome in the courts of the Nine. County Courts were more befitting.

Yet it was not for nothing that the attorney of old was pictured with an inkhorn at his girdle. The pen that can engross may write a stanza, and the habit of penmanship produces other things than are taught during articles. Compare the attorney with the architect, or sailor, or stockbroker, or almost any save the author by profession, and he has no need to be ashamed of the result. From Powell to Mr. Watts-Dunton, from Broome to Sir Theodore Martin, there is a long line. The doctors, no doubt, come first, with Campion, Sir Thomas Browne, Smollett, Garth, Arbuthnot, Keats, O. W. Holmes, Sir Conan Doyle,

and, unless his qualifications be doubted, Oliver Goldsmith. The attorneys do not boast so great a company, or any name in quite the front rank, for the claim of their calling to have influenced Shakespeare is contested. Men who give the greater part of their lives to their profession may do useful work, good serviceable work in letters, but must be content there with a secondary place. For honours and rewards they must look to their calling. In the attorney's sad case the rewards are few and the honours none. Hence the long list of men who have abandoned that branch of the law, including Warburton, Borrow, Beaconsfield, Dickens, and a whole bench of judges. But they may claim among critics and scholars, Theobald and William Roscoe; among poets and dramatists, Broome, Tobin, Barry Cornwall, and part-authors of *Rejected Addresses* and the *Bon Gaultier Ballads*; among novelists, Paltock and Shirley Brooks; among historians, Sharon Turner; and a long list of antiquaries. This, it must be remembered, is in spite of the claims of a calling immensely exacting in its demands for personal and unbroken attention.

Authorship may be because, or in spite of, the author's trade. Not all that doctors have written is due to medical training. It has been argued, indeed, that the vocation does not affect the real man; the dyer's hand is coloured, not his mind. So much may be admitted. It was not his attorneydom which made Lord Armstrong famous, not in Chancery Lane that Mr. Renshaw developed his smashing service, not because they were solicitors that Mr. Wreford Brown played centre-half for England, and Mr. Norton, Mr. Patterson, and Mr. Mason had the glory of

captaining the Kent eleven. And a solicitor, if he writes, may write of motor-cars, or microscopes, or druidical remains. His avocation, not his vocation, may give him his subject.

Yet one can hardly doubt that a man's calling affects his character. "Use and wont" shape our actions; precedents are followed till they have formed habits; the daily routine must have some effect on the mental equipment. James Smith and Sir Theodore Martin, no doubt, had the joyous inspiration of their early verses, not because they were attorneys, but because they were young. But the work done after the rapture of five-and-twenty has vanished must show some traces of the author's daily occupation. James Parsons of York (1799-1877), the most famous pulpit orator of his time, who was unequalled in his power of holding his audience enthralled, whose sermons are declared to have been perfect in method and arrangement, did not conceal his early connection with the attorneys. He had abandoned the law for the gospel as soon as his service under articles was finished. But he always spoke, it is said, like a lawyer, and eloquently charged the congregation empanelled before him to give their verdict for the right cause.

There is nothing in the attorney's training to make authorship unlikely; indeed, all the three great formative influences which the Lord Chancellor observed must leave some mark on the attorney. Of reading he must have something, and, if in the scholar's sense he cannot have much, he is always reading of men and affairs. Of writing he has more, and so should be exact. But "conference," this is the special business of the lawyer. In negotiation and the conduct



of affairs, in the understanding of character and penetration of motive, he should have the mastery that comes of long experience. Knowledge of men and business should be his strength; less only than the doctor's, and perhaps not less than his, is his opportunity of observation of men and women. So equipped one would expect him to be a successful novelist. But in fact there are few legal names in all the mighty lists of fiction—though the “legal fictions,” such as the picture of Richard Roe running up and down the bailiwick, betray imaginative powers of a high order. Perhaps the legal training checks the facile invention necessary to the novel; and it may be well that there is no temptation to violate professional secrecy and use as materials for fiction the strange chapters of family history which the attorney sometimes hears. For poetry and belles-lettres—“gifts that God gives”—the attorney is as other men. In such matters the solicitors deserve best of the world in their sons, having in that way given it two great poets; Milton, at least, was son of a London scrivener, and Wordsworth son of a Cockermouth attorney. But as historian, especially local historian, and antiquary, the attorney should be at some advantage in his own person. He is forced to know some history; he early makes acquaintance with legal antiquities in *Stephen's Commentaries*, for the law of real property would be unintelligible without historical explanation. Many interesting details of local history must be known to the country solicitor, who is familiar with the “titles” of half a county, and keeps those records of the manors in which so much curious matter is embedded. A large part of the story of the changing face of England is written in the parchments lying in his strong room.



We do, in fact, find many names of attorneys who have written on such matters, not indeed, noted, but not unworthy note. The list includes Philip Carteret Webb (1700–1770), a writer of legal tracts and preserver of records; he prosecuted John Wilkes and was unkindly described by Horace Walpole as a dirty wretch, a sorry knave, which perhaps was only Walpole's way of saying that he sat on the other side of the House; Thomas Astle (1735–1803), who at least set out to be an attorney, but early turned aside towards antiquarianism, and published *The History of Writing* and other archæological works; John Campbell (1708–1775), who also abandoned law when his articles expired, and wrote *The Lives of the Admirals*, books on military history, and much else; T. C. Banks (1765–1854), an expert in peerage cases and author of *The Dormant and Extinct Peerage of England*; William Burt (1778–1826), a writer on banking and politics; Stacey Grimaldi (1790–1836), a “record lawyer,” and his sometime partner J. S. Burn (1799–1870), the former of whom wrote *Origines Genealogicæ* and the latter *The History of the French, Walloon, Dutch, and other foreign refugees settled in England*, and in addition to printing records of marriages, published a *History of Henley-on-Thames* and histories of the courts of High Commission and Star Chamber; R. B. Wheler (1785–1857), who, as befitted a Stratford solicitor, wrote a *History of Stratford* and its antiquities, and articles on Shakespearean subjects; Sir John Bickerton Williams (1792–1865), of Shrewsbury, who wrote memoirs of Sir Matthew Hale and of the notables of nonconformity; C. J. Palmer (1805–1882), of Yarmouth, who wrote on the history of the borough he served and on Elizabethan architecture; W. S. Banks

(1820–1872), of Wakefield, whose subjects were Yorkshire dialect and antiquities. The list might doubtless be extended, nor ought one to omit such serviceable books as Mr. D. H. Lambert's *Shakespeare Documents*, or Mr. Ballard's *Introduction to Domesday Book*, very happy results of seeking the authorities at the fount.

If not extremely distinguished, the attorneys' is, one may repeat, no bad list. Can other professions, doctors apart, boast a better company of authors? The architects boast the considerable name of Mr. Thomas Hardy, creator of a delightful province; butchers may point to Kirke White; shoemakers have Bunyan and Thomas Cooper; the bankers have Rogers and Grote; artists, Reynolds and some distinguished successors. But is there a list more complete? A critic has deprecated the comparison of Oxford and Cambridge poets, and the enumeration of the authors begotten by rival trades would doubtless come under the ban. Yet there might be worse parlour games.

At least the attorney's record begins as early as any rival's, for his is an ancient calling. It might commence honourably with that distinguished citizen and town clerk of London, John Carpenter (1370?–1447), who perhaps alone among his fellows has been honoured by giving his name to a street. Since the days of the astute town clerk of Ephesus no one deserved better of his city. His school is famous. "With great expenses" he caused St. Paul's to be decorated about the north cloister by the "Dance of Death," "curiously painted upon a boord." He was one of Whittington's executors; he was member for the city; but in nothing did he render better service than in the work which gives him his claim to the rank and style of author, the compilation of that invaluable record of the city's privileges

and regulations, the *Liber Albus*. His preface dwells on the necessity of preserving records, the right attorney note. The profession, reputed like the Mahommedans never to destroy any scrap of paper, finds its belief stated in the first words of an attorney which have been preserved. "Forasmuch as the fallibility of human memory and the shortness of life do not allow us to gain an accurate knowledge of everything, even though the same may have been committed to writing—more especially if it has been so committed without order or arrangement," he said, and as the pestilence sometimes carried off the aged, experienced, and discreet rulers of London, leaving the city to unguided, younger men, a Repertory of its regulations had long been thought necessary. This he had compiled, finishing his task, not without a glance at the extreme laboriousness of the undertaking, in the month of November, in the Year of our Lord's Incarnation one thousand four hundred and nineteen, being the seventh year of the reign of King Henry, the Fifth of that name since the Conquest. His old age was full of honours. A patent from the King recounted that "in services to Us and our progenitors here and elsewhere, from the Times of his youth, not without great pains and unwearied loyalty, as well commendably as faithfully" he had "laboured earnestly." In recognition of this he was exempted from being knighted. Few indeed of later city dignitaries have received this reward.

But, perhaps his *Liber Albus* is not literature, and it may be straining our claim unduly to insist on John Carpenter as author. We may be content to pass from the times of Henry V. to the age of Shakespeare. If we may not claim Shakespeare himself, we may at least claim a contemporary of his, Thomas Powell (1572 ?—

1635?) who, like Shakespeare, combined practical wisdom with letters. Powell, says Dr. Furnivall, was a rollicking attorney and Welshman, who commenced with very bad serious poetry, and turned to "chaffing prose still intersperst with scraps of bad verse." Included in his nine known publications were four professional handbooks, two poems, one political pamphlet, and two books not easily classified. One of these was something akin to Dekker's *Gull's Hornbook*, and the other the serious yet cheerful advice of a man of the world on what to do with our sons. Perhaps it is by his legal books that Powell deserves to be remembered. But like most young men he commenced with poetry, issuing in 1598 a poem on the death of Achilles, under the title of *Love's Leprosy*. "It is incurable and so is love" was the author's explanation of the unsavoury title. From the commendatory verses by James Harman, we learn that Powell was very young, so that one may conjecture him to have been some fifteen years or so Shakespeare's junior.

"Let this suffice for all, thou mayst be bolde,  
So young a head neare wrote a verse so olde."

The phrase seems unhappy, but doubtless Mr. Harman meant to insist on the early maturity of the author's talent, not to question its originality. The author stated the difficulties of his subject forcibly enough—

"Achilles loves Polyxene: what is shée?  
The lyving daughter of his enemie,  
How shall he woo her that hath wed another,  
How shall he winne her that hath slaine her brother?"

But it may be confessed the reader's interest is not very keenly aroused. The author's professional in-

terests appear but once, when, in describing Achilles' wooing, he says,

"And this mooves him to prove practitioner,  
Solicite love pleas, Cupid's barrister."

Perhaps the picture inevitably suggested of the Greek warrior in a wig (though the Elizabethan pleaders wore their own hair) is not strictly classical. The author was not quite satisfied with his verses. In a brief appeal to the reader he said,

"Cast me not headlong from Parnassus hill  
Although my work be wanting to my will."

The Percy Society's editor agreed with Dr. Furnivall, calling *Love's Leprosy* "a sorry specimen of poetry." The concluding passage might have won a milder judgment—

"Now I do repent me,  
Now I do lament me,  
But, alas! too late.  
Gentle heart, relent thee,  
Though thou must content thee  
With thy froward fate.  
Heart content thee,  
Heart relent thee;  
Since Polyxen was untrue  
I lament me  
And repent me.  
Love and women, both adieu."

Powell's second venture, published in 1601, was again a poem inspired by a classical theme, *The Passionate Poet, with a description of the Thracian Ismarus*; but before the death of Queen Elizabeth he had forsaken Parnassus and turned to prose. This was in a pamphlet, *A Welch Bayte to spare Provender*, designed to show the reasonableness of her Majesty's dealing



with the Puritans on the one hand and the Papists on the other, even when the former "called in question the Superioritie of *Bishops* and pretended to bring a *Democracie* into the church." As the tract was not issued until after the accession and "happy proclamation" of that most high and mighty prince, endowed with many extraordinary graces, James I., the author judiciously proceeded to argue that good things would follow the union of the two kingdoms. In spite of this, and of its dedication to Shakespeare's patron, Lord Southampton, the book was suppressed, Mr. Valentine Simmes, the printer, being fined in the professionally appropriate sum of 13s. 4d.

Another printer, Simon Stafford, dwelling in Hosier Lane, issued in the same year Powell's poem, *Virtue's Due ; or, a true Modell of the Life of the right Honourable Katherine Howard, late Countess of Nottingham, deceased—*

" O there's no life like hers  
That lived to bury her executers,"

he says, obscurely. Three years later he contributed further verses to Ford's *Fame's Memorial*, but then found his true vocation in searching records. This was interrupted in 1613 by his appointment as Solicitor-General of the Welsh marches, a post he held till 1622. In that year appeared, *Wheresoever you see me, trust unto yourselfe ; or, the mystery of Lending and Borrowing. Seria Jocis ; or, the Tickling Torture, . . .* By Thomas Powell, London-Cambrian. It is, says Dr. Furnivall, "a chaffy, rollicking description of the different kind of Borrowers,"—the courtier, the Inns of Court man, the country gentleman, and the rest. Powell had observed men as well as records, and was familiar with the "two famous universities the

Seminary of so many desperate Debtors," to which he dedicated the book—

“ Ram-Alley and Milford Lane  
Milford Lane and Ram-Alley.”

He hints, indeed, that he had been a fellow of a college in Ram-Alley, and shows complete familiarity with the numerous approaches to the debtor's Alsatia, and the means of escape from the “Chancery Lane end men” and other officers of the law. He sings to the tavern-keeper—

“ Give me old ale, and booke it,  
O give me old Ale, and booke it ;  
And when you would have your money for all  
My cousin may chance to looke it.”

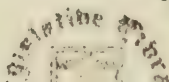
The attorney showed no love for the scrivener. Powell pictured the country gentleman, intent on borrowing, conducted by his attorney to the Ship, behind the Exchange, and introduced to the only *Noverint* from his part of the country. The scrivener promised freely, but the Elizabethan borrower found the advance slow in coming, while the scrivener professed himself overworked with sealing of writings and commissions of bankruptcy. When the scrivener was found asleep in his shop, Powell exclaimed, “ Good man ! For if ever he were good he were then good ; or (at least) I am sure he was then and there at the very height of Scriveners' goodness ; the height of their holiness, and the perfection of their punctuality.”

“ Then will I sing the Lender and the Debter,  
The martiall Mace, the Serjeant and the Setter,  
Ruines and reparations of lost wealth,  
Still, where you see me, Trust unto your selfe.”

Next year, 1623, Powell turned to professional authorship, and there appeared *The Attornies' Academy*, a really heroic effort to chart the as yet almost unsurveyed ocean of legal practice. In the epistle to the reader of another legal handbook, published in 1627, *The Attornies' Almanacke*, Powell said he conceived the number of readers would be but small, consisting only of attorneys, solicitors, clerks practising in either law, and stewards of divers kinds. Nor did he expect reward. His aim, he said, was not levelled at any lucrative landmark. In this he may have been pleasantly disappointed, for the *Academy* was reprinted in 1630, again in 1647, and became one of the few standard books of the attorneys. Powell did not disguise the difficulties of his task in these professional essays. "He that knows most in the practice of the Laws, knows most how impossible it is with the single qualitie of any one man living to reduce the infinite differing parcels of this account, into a perfect and certaine summe at the first Collation or Calculation thereof." But, he justly claimed, he had done his best. In the nautical metaphors of which he was fond, he declared that he had "travelled as far as the Victuall and Tackle which I was able to provide with my ready Stocke, would beare me. And it shall be held amongst all well-affected English seafarers, worthy the hazard, charge, and time bestowed upon it." He had, indeed, travelled far. In this mood he was ever industrious; no drudgery was too tedious for him. The *Direction for Search of Records* is said to have been the result of twenty years' work. The *Academy* is full of the most detailed directions; the attorney must take the writ to the master and get the amount paid indorsed on it. In setting a case

down for trial he must take the writ and the jury's names to the clerk of the Assizes. If the practitioner gave the clerk something more than the ordinary fees, he would call the jury at such time as the attorney appointed, otherwise he might stay long enough; and so forth. So in the *Repertorie of Records* he recorded that papers relating to Flanders and Holland are laid in the chest under the window, that next the door on the left hand is a bag intituled, Bagamanorium, in which are inquisitions held in divers shires, and so on, until the records at the Tower, in Chancery, and at Westminster had all been duly catalogued. In the *Attornies' Almanacke* he collected the proper style of the various courts and authorities, "for the general ease and daily use of all such as shall have occasion to remove any Person, Cause, or Record from an Inferior Court to any of the higher Courts at Westminster." So a writ to the Governor of Dover Castle was to be addressed to "Constabulario nostr. Castri nostri de Dover in Com. Kanc. infra libert. Quinq. portuum sive Deputat. suo ibid et eorum aliter." The whole book is a collection of such forms, invaluable to the practitioner, unreadable by all others. A man of lively wit, Powell restrained himself to be merely accurate, and is among the first of the blessed race of index-makers and guides.

It was only in dedications and epistles, and the apparatus of introductory matter required by the fashion of the time, that Powell allowed the author in him scope and free expression. *Love's Leprosy* had been dedicated to the Right Honourable Sir Robert Sydnie, Lord Governor of Flushing, afterwards Earl of Leicester, with an assurance that to him T. P. wished all increase of honour, with the continuance of his house in that



flourishing estate wherein it was then established. The *Direction for Search of Records* was dedicated to four personages, ranging from James I. to Noy, reader at Lincoln's Inn. But Powell did not fail to see the fun latent in the customary laudatory addresses to great men. In the Epistle Dedicatory to the *Almanacke*, he explained that when the printer called for the sheet he had commenced "To the High and Mightie," but on reflection had scratched that out, and commenced "To the Right Honourable." Again at fault and puzzled, he had started a third time with "To the Right Worshipful"—thinking that, at least, would fit like the seal-ring of an alderman upon the title-page of his book. But that, too, was abandoned. The most notable of Powell's encomiums is that in the *Attornies' Academy* upon Lord Bacon: not upon the Chancellor in the height of his power and reputation, but—to Powell's honour, as Dr. Furnivall says—to Bacon after his fall:—

" TO  
TRUE NOBILITIE  
AND TRYDE LEARNING ;  
*Beholden*  
To no Mountaine for Eminence  
Nor Supportment for his Height  
FRANCIS Lord *Verulam* and  
Viscount *St. Albanes*



O give me leave to pull the Curtaine by  
That clouds thy worth in such obscuritie.  
Good *Seneca*, stay but awhile thy bleeding  
T'accept what I received at thy reading :  
Here I present it in a solemn straine,  
And thus I pluckt the Curtaine back again.

The same

THOMAS POWELL."



One wonders how it was Powell received the book at Bacon's reading. The *Repertorie of Records* was dedicated "To the Unknown Patron"; but the necessary verses finished, Powell adds a note, "To the same Great Patron."

"The Great Master  
Of this Myserie  
( )  
Our Author payeth this  
In part of a more  
Summe due."

Was Bacon intended here also? The *Attornies' Almanacke* was ultimately dedicated, after so many false starts, to "the True Noble Gentleman, Thomas Meutys, Esquire, and clerke of his Majestie's Most Honourable Privie Counsell." Probably this was Sir Thomas Meutys, Bacon's faithful secretary, to whom, with another creditor, administration of the dead Chancellor's insolvent estate was granted; the friend who, at his own charges, erected to Bacon the "handsome and characteristic monument" which adorns the church where he lies. One may assume, therefore, that Powell had been acquainted with Bacon and his entourage. Is there material here for a new cryptogram?

If that be discovered we may have an explanation of a quarrel of Powell's now obscure. Like the great Chancellor he had an enemy. "I must tell you," he says, doubtless addressing this antagonist in the guise of one who would blame him for his book's imperfections, "that the Million Multitude will repute and report you for a second ALEXANDER, not the Conqueror but the Coppersmith, not famous for triumph but for trade, not ALEXANDER who in his greatness would be worshipped as a God himself, but Alexander who

in his leather Apron would have the very puppets which his hand rough-hewed, draw an adoration and reverence amongst the people.

“Goode ALEXANDER, do not feare thy trading,  
Peruse me not, though thou deny thine ayding :  
I aske but ayde of Patience and of Time,  
To frame and finish this poor work of mine :  
To make, to mend, to perfect, and to polish,  
What Alexander’s wisdoms thinks so foolish.”

Probably we shall never know who was this Alexander who did Powell much evil, or how Powell’s muse had been, as he complained, wounded. Alexander may have been an official who refused help to the book-maker, or a contemporary critic who thought, as our own do, that the Muse, even unwounded, went but lamely. One may hope that Powell’s happiness was not much diminished by the hurt. His last work shows him cheerily enough pointing out the numerous avenues to preferment “in all professions, trades, arts, and mysteries.” *Tom of all Trades* (1631, second edition 1635) is in the form of a conversation with a fellow-traveller in the happy long vacation time. “Trinity term was now ended,” he begins, with a blitheness that suggests an official rather than a practitioner. He discourses on his way to St. Alban’s on how to get advancement in all callings—physicians, apprentices (they cover all trades), courtiers, soldiers, land soldiers, navigators. For lawyers Powell saw advantages in the Civil Law. “It is to be confest, the charge of breeding a man to the Civill Law is more expensive, and the way more painefull, and the books of greater number and price than the Common Law requireth. But after the Civill Lawyer is once growne to Maturity, His way of Advancement is more beneficiall,

more certaine, and more easie to attaine, than is the Common Lawyer's; and all because their number is lesse, their learning more intricate. And they admit few or no Sollicitors to trample betweene them and the Clyent. So that the Fee comes to them immediately and with the more advantage." But the reader of Powell's long list of offices and clerkships open to the Common Lawyers will waste no pity on the practitioners of Jacobean times. All these together, Powell justly said, afforded "sufficient maintenance for thousands of persons who may be here well provided for." Having pointed out these avenues to wealth for his companions' sons, Powell added some advice for the benefit of the three daughters. Some signs of growing age may, perhaps, be detected here; girls were not what they had been. "Let them learne plaine workes of all kinde," he said, "so they take heed of too open seaming. Instead of songes and musicke, let them learn cookerie and laundrie. And instead of reading Sir Philip Sidney's *Arcadia*, let them read the *Groundes of Good Huswifery*. I like not a female poetesse at any hand." On the title-page Powell called himself "an old traveller in the sea of experience, among the enchanted islands of ill-fortune," but one may doubt whether his stay there was long; his cheerful spirit and outlook on life speak of happier countries. He was, says Dr. Furnivall, "a practical, sharp, business man, with a gift of racy speech. . . . I hope his readers will take to him somewhat."

There was a contemporary namesake of Powell's, a writer of sober taste, who also belonged to the west country. Robert Powell (fl. 1634-1652) described himself as of New Inn, gentleman, but also as of Wells, and as having for twenty-five years enjoyed a good

practice in Gloucestershire. To Robert Powell we owe a life of King Alfred, a book on depopulation "arraign'd and corrected and condemned by the Laws of God and Man," and a volume on Courts Leet. The title-page of the last belongs to the category of title-pages which are as long as an ordinary preface, and declares the treatise to be of the antiquity, authority, uses and jurisdiction of the ancient Courts of Leet or view of Frankpledge. Mr. Powell apparently derived these, or at least their "subordination of Government," from "the Institutions of Moses the first Legislator," and derivatively from his hero, King Alfred. For so copious an author it was almost unnecessary to state that the chapter which he added on the oath of allegiance was a "large explication" of that subject. If one does not read Robert Powell—and, it has been hinted, "view of Frankpledge and all that to view of Frankpledge doth belong" is an unfamiliar theme to us degenerate moderns—one may respect the author's reasons for writing. He gave his work as a debt due from him to the Commonwealth for expiation of so many lost and misspent hours of precious time (an example which, if generally followed, might inconveniently increase the multiplicity of books); and as payment of a debt to his profession, since every one might cast, if not a talent, yet a mite, into the common treasury. In the manner of his time Mr. Powell supported his arguments by frequent scriptural quotations, but the secular authorities of decided cases and "Master Bracton" are not wanting in his book.

Another attorney-author in the times of the troubles was of a very different character. When on 10th April 1663, Mr. and Mrs. Pepys laid out ten shillings at the New Exchange upon pendants and painted

leather gloves, "very pretty and all the mode," and dined at the Royal Oak in Lombard Street, they met there "Alexander Broome, the poet: a merry and witty man, I believe," said the diarist, "if he be not a little conceited." When three years later Pepys again met him at dinner, he names among the company the Lieutenant of the Tower "and Broome his poet." A prouder title was conferred by Phillips in his *Theatrum Poetarum*. This poet, he said, might be styled "the English Anacreon"; and he added that "among the Sons of Mirth and *Bacchus*, to whom his Sack-inspired Songs have been so often sung to the sprightly Violin, his name cannot choose but be immortal." The clash of arms in the Civil War did not silence the Muses, nor did the sword deprive the lawyers of all work, apparently. For Brome (1620–1666) not only helped the cavaliers by his songs to keep up heart in dark days, but continued to keep his place even in the Parliament-loving London. He was an attorney of the Mayor's Court; "yet poetically addicted," says Phillips, "a Man of Law and Poetry at once—strange incongruity, one would think." In the company of the poets on the King's side, though it includes Waller and Lovelace, Suckling and Herrick—a notable regiment, even if unequally matched against Milton, Marvell, and Wither—Brome is not the least. The brief record of his life makes no mention of his fighting for the King, save with his pen. Perhaps his verses show no very martial spirit; and, indeed, the poets on either side made no great figure in the wars. So he sang

"A pox of this fighting,  
I take no delighting  
In killing of men and of plunder,  
A gun affrights me like thunder."



He seems once, on compulsion, to have borne ineffectual arms for the Parliament—

“I was with other fools sent out  
And stay’d three days, but never fought  
’Gainst King or Cavaliers.”

Yet Izaak Walton was able to say, in his “Humble Eclogue” prefixed to Brome’s collected poems—

“Here’s a Collection in this book  
Of all those chearful songs, that we  
Have sung so oft and merilie  
As we have marched to fight the cause  
Of *God’s Anointed*, and our *Laws*.”

And Chalmers declares that Brome had the reputation of ably assisting the royal cause by his poetry, and even of having no inconsiderable hand in promoting the Restoration.

It was in 1660 that the law had become mightier than the sword. Twelve years earlier it had been a bad time for statutes or cases; so the attorney declared—

“A cutler’s shop affords us stronger law  
Than Cook or Littleton e’er read or saw.”

And in another copy of verses—

“The lawyers must lay by their book,  
And study Lambert more than Cook;  
The sword’s the learnedst pleader;  
Reports and judgments will not do’t  
But ’tis dragoons, and horse and foot:  
Words are but sound, but blows come home,  
A stout-tongu’d lawyer’s but a mome  
Compar’d to a stout file-leader.”

This notwithstanding, he stuck to his business; there safety lay. “I’m attorney still,” he wrote—

“A poor attorney is a safer thing  
Now, than to be Protector or a King.”

Yet he thought but little of his calling—

“Brothers still with brothers brawl,  
And for trifles sue 'em ;  
For two pronouns that spoil all,  
Those contentious *Meum, Tuum*.  
The wary lawyer buys and builds,  
While the client sells his fields,  
To sacrifice to's fury ;  
And when he thinks to obtain his right,  
He's baffled off, or beaten quite  
By th' judge's wile or lawyer's slight  
Or ignorance of the jury.”

Doubtless the six attorneys who had a monopoly in the Mayor's Court found their work a little dull, with small causes and no competition. But Brome practised in the Superior Courts also ; the great voice of the great crier at Westminster Hall, shouting “Faunt-le-roy and Alex-and-er Brome,” moved him to verse ; such a voice would make all aspirants to fame desire to be attorneys. Since the law was his calling, he would do his best. He knew his times for business, and that done made rhymes, said Izaak Walton, but not before. He would not be suspected of being an ambi-dexter. Addressing the Lord Chief Justice of the King's Bench, he declared—

“Full twenty years have I a servant been  
To this profession, I live by, and in ;  
Eight years a master, and in all this space  
Have nothing done that misbecame my place ;  
Nor have my actions been derogatory  
Unto my client's profit, or the glory  
Of this renowned Court.”

The twenty years' service of the law brought him not wealth, but competence ; just enough money, he said, to spoil his poetry. He made no moan of this com-

parative poverty. They that had no estate paid no taxes or rates, and were free from anxiety; the poor man was merrier than the mayor, he thought. But since the law was his livelihood it was to be hoped—

“That the rich Londoners may fall out  
And go to law till money’s all out.”

And a friend wished for him—

“That the itch of law may affect all London  
Till you are rich and they are undone.”

But Brome lacked the ambition which makes men desire riches; he would not affect a station above an attorney’s—

“I boast not of a pedigree  
That lords or lordlings be;  
Nor do I lace my name with grandsires’ story,  
Nor will I take the pains to look  
For a fool’s coat i’ th’ herald’s book,  
My fame’s my own, no monumental glory.”

Why should a man scheme and cheat—and tradesmen and preachers were no better than the lawyers—when all that he gets by it is to die worth so much? Of wealth, he says, the lawyer in him peeping out in verse, “we’ve possession not enjoyment.” Why extort, oppress, and grind, merely to be a squire and of the quorum? When the Parliament had triumphed, why oppose? Let time run; opposition made things worse.

“Let grandees wealth and power engross  
And honour, too, while we sit close,  
And laugh and take our plenteous dose  
Of sack, and never mind ’em.”

That was Brome’s philosophy; a plenteous dose of sack. To small beer he was no friend; “low liquors

render brains unwitty, cider and perry might make a man mad, but not merry; claret and white wines were but French liquors; Rhenish was fit to please ladies; but for a man there was no drink but sack." While the King was with them he cried to "fill this unnatural quart with sack," and drink a health to his Majesty; when there was no king, why, let the bottle be crowned. "When O. C. attempted to be king," and healths were voted down, he called for the same comfort. When times changed, and General Monk was at Clothworkers' Hall and a happy settlement begun, there was more reason to eat and drink and rejoice. So in all the circumstances of the State, and in all conditions of a man's life, sack was the thing, glorious Canary. It turned bad times good, and good times better; it gave poetical fancies the wing, and made life one long happiness.

Sad times could call from him a more serious note, as in what is, perhaps, his best poem, "On the Loss of a Garrison; Meditation":—

"Another city lost! Alas, poor king!  
 Still future griefs from former griefs do spring.  
 The world's a seat of change; Kingdoms and Kings,  
 Though glorious, are but sublunary things.  
 Crosses and blessings kiss; there's none that be  
 So happy, but they meet with misery.  
 He that erewhile sat center'd to his throne,  
 And all did homage unto him alone;  
 Who did the sceptre of his power display  
 From pole to pole, while all this rule obey,  
 From stair to stair now tumbles, tumbles down,  
 And scarce one pillar doth support his crown.  
 Town after town are lost, field after field,  
 This turns, and that perfidiously doth yield:  
 He's banded on the traitorous thoughts of those  
 That, Janus-like, look to him and his foes.

In vain are bulwarks, and the strongest hold,  
 If the besiegers' bullets are of gold.  
 My soul, be not dejected ; wouldst thou be  
 From present troubles or from danger free ?  
 Trust not in rampires, or the strength of walls,  
 The town that stands to-day to-morrow falls.  
 Trust not in soldiers, though they seem so stout ;  
 Where sin's within, vain is defence without.  
 Trust not in wealth, for in this lawless time,  
 Where prey is penalty, there wealth is crime.  
 Trust not in strength or courage ; we all see  
 The weak'st of times do gain the victory.  
 Trust not in honour : honour's but a blast  
 Quickly begun, and but a while doth last.  
 They that to-day to thee "Hosanna" cry,  
 To-morrow change their note for "Crucify."  
 Trust not in friends, for friends will soon deceive thee ;  
 They are in nothing sure but sure to leave thee.  
 Trust not in wit ; who run from place to place,  
 Changing religion, as Chance doth her face,  
 In spite of cunning, and their strength of brain,  
 They're often catch'd, and all their plots are vain.  
 Trust not in counsel ; potentates, or kings,  
 All are but frail and transitory things.  
 Since neither soldiers, castles, wealth, or wit,  
 Can keep off harm from thee, or thee from it ;  
 Since neither strength nor honour, friends nor lords,  
 Nor princes, peace or happiness affords,  
 Trust thou in God, ply him with prayers still,  
 Be sure of help ; for he both can, and will."

Generally Brome set no high store on his verses. They were well crowned if they won a laugh ; their fate was in the reader's will, not in the writer's wit. He wrote a comedy, but could refer to "the tedious toils that we call plays." He gave his verses to the fiddlers and hoped it was no sin to make sonnets. "A lazy disease and a long Vacation" had to combine to induce him to collect his poems, the first inclining him to do nothing else, the second affording him nothing else to



do. As for the excuses for printing, he said, they had all been used before by grave authors. Moreover, they were not true. Friends had not urged him to print, for he had not told friends of his plan; he did not publish to oblige his friends, for that was rather a way to add to than discharge obligations. He was not sure the poems were good. Yet he had sometimes been told so to his face, and had been fool enough to believe it. At least there was no better excuse for him. So he protected himself by dedicating the book to Sir J. Robinson, his Majesty's Lieutenant of the Tower, feeling that the man who had charge of the soldiers, the lions, the guns, and the money could afford shelter even to "these youthful vanities" of his. Few prefaces have presented a more attractive glimpse of the author they introduce.

Since he was a poet, for fashion's sake, he must write love verses, but he was not an ardent lover—

"I have been in love, and in debt, and in drink  
This many and many a year"

he sang; but with a proper sense of increasing emphasis he put the feeblest emotion first. Rather he was careless and over-candid in his wooing—

"Tell me not of a face that's fair,  
Nor lip and cheek that's red,  
Nor of the tresses of her hair,  
Nor curls in order laid;  
Nor of a rare seraphick voice,  
That like an angel sings,  
Though if I were to take my choice  
I would have all these things.  
But if thou wilt have me love,  
And it must be a she  
The only argument can move  
Is, that she will love me.

The glories of your ladies be  
 But metaphors of things,  
 And but resemble what we see  
 Each common object brings.  
 Roses out-red their lips and cheeks,  
 Lilies their whiteness stain ;  
 What fool is he that shadows seeks,  
 And may the substance gain ?  
 Then if thou'lt have me love a lass,  
 Let it be one that's kind,  
 Else I'm a servant to the glass  
 That's with Canary lin'd."

Moreover the lady must love him as he was ; he would make no concessions.

"Though my hair's little, I'll not carry  
 A wig for an auxiliary.  
 If my looks can't, another's shan't invite you."

If the lady would not love, why, he would bestow his affection on his book, and his Muse, and his horse, and "his country, prince, and laws, and those that love the King." For fashion's sake he would extol her charms, "and range this universal frame, for epithets to praise her"; still, she should not take such things literally—

"But yet be wise,  
 And don't believe that I  
 Did think your eyes  
 More bright than stars can be ;  
 Or that your face angels' outvies  
 In their celestial liveries ;  
 'Twas all but poetry.

I could have said as much by any She :  
 You are not beauteous of yourself, but are made so by me."

Nor did he desire any meretricious attractions to his love, no "oils and paint, and drugs that cost more than the face is worth!" But once, at least, Brome showed the true lover spirit—

" 'Tis not her worth, her friends, nor yet her treasure,  
 Nor do I covet her for sensual pleasure,  
 Nor for that old morality,  
 Do I love her cause she loves me,  
 Sure he that loves his lady cause she's fair,  
 Delights his eye, so loves himself, not her.  
 Something there is moves me to love, and I  
 Do know I love, but know not how, nor why."

The poems passed through three editions, but have found no recent editor. The author edited and contributed to a verse translation of Horace and to *The Rump*, that collection of verse against the Long Parliament which won all the fame it deserved; contributed also to other collections, and projected a translation of Lucretius. His life cannot, therefore, have been as idle or as bibulous as he painted it. Indeed his praise of wine is so over-emphatic that he lies open to suspicion of extremely temperate habits. He died on 30th June 1666, and was interred, by his own desire, under Lincoln's Inn Chapel. So runs the customary record. Of a poet not for a hundred years reprinted, it might seem more true to say he is buried in quarto or in folio. But, despite his fate, few men less deserved such an epitaph than Brome, who seems always to have given the impression of vitality. Doubtless for him the editor and the reprint will come soon, and, as Sir Thomas Cokayne put it, "change faded *Broome* to deathless *Bays*."

In addition to writing *The Cunning Lovers*, Brome edited the plays of a namesake who was no relation of his, Richard Brome, who had been a servant of Ben Jonson. His aid might well have been asked, had he lived a little longer, for an attorney-dramatist of the period, John Banks, who between 1677 and 1696 gave seven dramas to an ungrateful world. He was "a dreary and

illiterate writer, with many defects of language," it is said; yet apparently he had some melodramatic force, since according to another critic his tragedies attained their end in moving Terror and Pity. He was of "the worthy society of New Inn," and, according to Langbaine, "quitted the more profitable practice of the Law for some years, in pursuit of the Bays, till Experience convinced him of his error, and that the ungrateful Stage, like other friends we often esteem, forgets the obligation it has to one." When Langbaine wrote Mr. Banks was "wholly applying himself to a more gainful employ." One may well believe the stage brought little money; Theobald's long struggle was to prove that, if proof were needed. But one would like to think Langbaine did not exaggerate the gains of that "more profitable employ" the law, which always seems more lucrative viewed from without the profession.

Mr. Banks, who secured so much immortality as is conferred by mention in the *Dunciad*, was not the only recruit the stage won from the Inns of Court during the reign of the second Charles. Langbaine, or rather his editor Gildon, notes the names of Tom Durfey, Sir George Etherege, Thomas Southern, and Edward Ravenscroft, who had been "designed for the law," the last of whom retained sufficient interest in legal matters to translate *Ignoramus* for the Theatre Royal in 1678. One other attorney-dramatist is selected by Gildon for notice, and indeed, for severe reproof. *The Cornish Comedy* (1696) was written, he said, by a Cornish attorney, "who had better have kept to the other offices of the Quill, so very different from those of Parnassus": and he noted with apparent satisfaction that the play failed. The play was published, with a preface by way of vindication and appeal against the judgment of the

playhouse, and Gildon observed that this was the fashion with most unsuccessful plays, "let them fall never so flat." One understands why the Cornish attorney did not disclose his name.

Anonymity suited the humour of another attorney who, half a century later, published what is probably—professional compositions apart—the most notable work of imagination his calling could claim until our own day. He was modest enough to conceal his authorship even when the book had proved successful; and his identity was revealed only after his death, and proved by an accident more than seventy years after the book's appearance. Robert Paltock (1697–1767) was an attorney, the grandson of an attorney, and had other attorney relatives. Attorneydom was in his blood; he accepted his own bondage to the family profession, so far as our small knowledge of him tells, without the protest and the struggle which often mark the youth of literary leanings; he lived within the legal district, in Clement's Inn; he seems to have practised his calling contentedly: yet he of all men suffered least from that restraint on anticipation, that impediment of the imagination, which may be supposed to beset the man of forms and routine. For it is to him we owe the *Life and Adventures of Peter Wilkins*, with an account of his shipwreck near the South Pole, his arrival by a subterranean passage in the interior of an uninhabited island, the advent there of the flying people, and—his especial triumph—among them the charming heroine, Youwarkee. On the title-page the book is described as by R. S.; only the dedication bears the initials R. P. The reception of the book thus unostentatiously submitted to the world was, at first, unkindly. Mr. Bullen, Paltock's latest editor, could trace only one



review, and that declared the book to be derived from *Gulliver's Travels* and *Robinson Crusoe*, and to combine their defects without their merits. But the public differed from the critic. *Peter Wilkins* appeared in 1751, some copies being dated the year before; an edition immediately appeared in Dublin, a second London edition in 1783, a third at Berwick in 1784; it was included in Weber's *Romances* in 1812; Stothard illustrated it in 1816; a French translation was made in 1763, a German one in 1767; it furnished the material for a pantomime in 1800 and a "spectacle" in 1827; it has been frequently reprinted in later years. Nor were its admirers poor judges of literature. Scott and Lamb praised it; Southey thought the winged people the most beautiful creatures of the imagination ever devised, and admitted he took his "blessed Glendoveers" from them. Coleridge was enthusiastic in his admiration, and Leigh Hunt (who had been in an attorney's office himself, but did not mention the fact in his *Autobiography*) was never tired of referring to the subject. A sweeter creature than Youwarkee, he said, is not to be found in books: "she does the author immortal honour. She is all tenderness and vivacity, all born good taste and blessed companionship . . . the good of her husband's home and the grace of his fancy." That heroine, Paltock said with gallantry in his dedication, was drawn from the Countess of Northumberland, to whom the book was inscribed; had his situation in life but given more opportunities of observing his model, he would have made Youwarkee "a standard for future generations" and "have defy'd the whole *British Fair* to have outshone" his "southern Gawry." Think, says Leigh Hunt, "of a lovely woman set in front of an ethereal

shell and wafted about like a Venus, and you have the best idea of Peter Wilkins' bride."

It is true that in another mood he would have had the heroine wilder, more elvish, capricious, and unaccountable; and it must be confessed that modern critics are generally less laudatory. Professor Raleigh finds the author's fancy, graceful though it is, mechanical and mathematical in essence, just as his first critic thought he deserved encouragement "at least as an able mechanic, if not as a good author." The book, says the Professor, is chiefly a fanciful contribution to Natural Philosophy; parts of it might have been contributed to the Royal Society in its early days. Nor can the debt to Defoe be denied. The book undoubtedly belongs to the class of *Robinsonades*; it is, according to Leigh Hunt, almost the only good member of its class. The commonplace name of the hero—which at first was to have been Peter Pantile (so that he narrowly escaped a double anticipation of the character with whom Mr. Barrie has charmed the children of our day), but was changed, possibly in compliment to Bishop Wilkins, who had discussed the possibility of flying—the numerous unimportant details of daily life, and the realistic touches are clearly derived from Defoe.<sup>1</sup>

As the flying people could not be supposed to speak English, it was incumbent on the author, if he would preserve the verisimilitude of his narrative, to invent the language the hero learned from his bride. He did so, and a very unattractive language it was. His proper names are sometimes unpronounceable. You-

<sup>1</sup> Paltock may have remembered that Robinson Crusoe, like himself, had been designed for the law, but having arrived at the age of eighteen, found himself too old to enter an attorney's office.

warkee came from Normubdsgrsutt, leaving her father Pendleharnby and her brother Quangrollart, afterwards *Colamb* (governor) of Crashdoorpt. The flying men and women were *glumms* and *gawren*; marriage was *hunkum*, a husband was *barkett*, a boy a *yacom*, and a soldier a *nasgig*. It is a more important criticism that *Peter Wilkins* becomes less interesting when he and Youwarkee cease to be the only inhabitants of the island; the same objection has been taken, with equal truth, to Robinson Crusoe. The discourses on politics and government are certainly not more tedious than Defoe's, and if there is some imitation of Gulliver, nothing is farther from Paltock's mind and manner than the savagery of Swift.

Of Paltock's life little is known. His father was his mother's third husband, so that he had in either parent a rare example of intrepidity. His youth was spent at Enfield, he received a legacy from his grandmother, married the daughter of an Italian merchant who lived in Austin Friars, had children who did fairly well in the world, moved at some time from Clement's Inn to Back Lane, Lambeth, appears to have become entitled under his brother-in-law's will to property at Ryne Intrinsica in Dorsetshire, and ended a life which his literary contemporaries never noticed, on 20th March 1767. Perhaps the success of his first book induced him to repeat the experiment; he may well have been the "R. P. gent." who was responsible for a tale, "Memoirs of the Life of Parnese, a Spanish Lady," published in 1751. Mr. Bullen thought there was no ground to suppose him the author, while a later critic thinks it sufficient evidence to the contrary that the book was dedicated to the wife of Paltock's second cousin. In any case, it is

agreed that the book is dull and unworthy of him. His fame rests on his first book, and this, like other first books, brought the author no great wealth. In 1835 his agreement with Dodsley for its publication was discovered; for the copyright he received £20, twelve copies of the book, and proofs of the illustrations. Probably Paltock did not greatly need money, and it was not fame he sought, since he chose to publish anonymously. The pleasure of writing must have been his motive to write. Leigh Hunt liked to fancy him, a gentle lover of books, sitting in his quiet rooms in Clement's Inn, then one of the prettiest corners of London. It may have been there that he heard the chimes at midnight, as by his lamplight he devised the twilight gloom of Graundevole; but possibly it was in the rural retreat of Back Lane, Lambeth, that he created the arkoe, and first saw Youwarkee spread her graundee. Happy the man who can thus solace dull days of labour by imagining a smiling island in the uncharted ocean! Happy even he who, not venturing to body forth the shape of things unknown, can close eyes and ears to the sights and sounds of the city and recall the blue of southern seas, the rustle of the reeds in autumn, or the glory of a windy sky above the open heath! *Peter Wilkins* is not a very great book, but it is a very pleasant one, and the author no unworthy specimen of the attorney as man of letters.

## THE ATTORNEY AS MAN OF LETTERS (II.)

IN 1772, when Lord Mansfield was Chief Justice, Lord North Prime Minister, Cornwallis sat in the chair of St. Augustine, and the Duke of Dorset and Sir Horace Mann were the mainstays of Kentish cricket, Mr. John Burnby, attorney-at-law, practised his art at Canterbury, and published *The Kentish Cricketers*, a poem. The little we know of Mr. Burnby is found in the *Gentleman's Magazine*, odd fragments thrown up by the waves of Time from the wreck of a career. He was, it is said, "a man of very eccentric character, imprudent, intemperate, and of late years in distressed circumstances." The only other facts recorded of him are that he separated from his wife, and lost a son in the *Invincible*. But because of his celebration of the games between Kent and Surrey, when at first

"Surry did the Victory gain  
By LUMPY, FORTUNE, ART, and RAIN,"

he has won a niche, if not in literature, at least in the literature of the game. He gloried, he said, in the appellation of a Man of Kent.<sup>1</sup> "Happy, happy Canterbury!" he wrote; "in thee, thou independent city, I owe my birth; and I glory that not a borough, town, city, or county in the kingdom can vie with thy

<sup>1</sup> *Thoughts on the Freedom of Election*, Rochester, 1785.





JAMES SMITH



noble spirit of liberty." One would have expected so ardent an admirer of the game to glory more especially in its proximity to the cricket ground, on the occasion he sang, when

"KENT, who is fam'd for Men of Skill,

Agreed a CRICKET MATCH to play  
With SURRY men, as fam'd as they."

The game, which Surrey won, owing to the numerous reasons stated, had already been sung by the author's friend, the Rev. Mr. Duncombe, in a parody of *Chevy Chase*; the return match reversed the luck. Surrey had won the toss at Bishopsborne, and ("though Reason urged her plaintive song, To prove the Surry sportsmen wrong") she had pitched the wickets "far from the usual place of play," doubtless on one of those "brows" on which honest Lumpey liked to bowl. Now "Fortune gave Kent the choice of ground," and

"Candor the Kentish sportsman taught  
To pitch the wicket as he ought."

Virtue was rewarded, and Kent won the match. The Duke of Dorset, besides being a big hitter, was a bowler.

"His Grace for bowling cannot yield  
To none but Lumpey in the Field."

And Miller, "of England's Cricketers the Best," hit honest Lumpey's bowling "at will," and knocked off the runs. This time it was the Kentish poet who assumed his singing robes.

His other poems are not very notable; and though Dodsley published for his brother bard, and the author bespoke an ample audience by inscribing his *Summer Amusement* to "the frequenters of Margate, Ramsgate,

Tunbridge Wells, Brighthelmstone, Southampton, Cheltenham, Weymouth, Scarborough, &c.," it is doubtful whether many holiday-makers spent their vacation studying his works. He sang of rural felicity and the pleasures of the country, collected his epitaphs and extempores, inveighed against the Methodists, and celebrated the "enlargement" of quite another sort of person.

"Britons, rejoice! the noble Patriot's free,  
Wilkes, the great Genius of the English race."

Further, he sang—so long before Calverley—of beer: "the stuff," he called it. In "Southport Stuff," he denounced a professional rival, or—possibly in a fit of remorse—himself.

"The last is a Lawyer, a Sanctified brute,  
Who's a Saint or a Devil, as clients may suit;  
For he'll damn all his foes and his friends in a huff,  
And to Hell he would go, for to finger the Stuff."

In his cricketing verses he had touched on the subject, which plainly interested him, in a different spirit.

"View but the Drunkard as he reels,  
And ask next Morning what he feels."

He wrote also a *Guide* to Canterbury Cathedral, which his friend and rival-poet Mr. Duncombe afterwards edited, and addressed the inhabitants of Deal and Great Britain on the increase of their poor rates. But it is as a poet of cricket that, if at all, he will be remembered.

For the sake of the serious reputation of attorneydom one turns hastily to men of serious mind and larger reputation. Yet one may linger to name a contemporary of Mr. Burnby's, Ebenezer Forrest, who wrote

an opera, was a friend of Hogarth, and left an account of a holiday he took with the artist;<sup>1</sup> and his son Theodosius (1728–1784). The son, called from his size “Little Forrest,” sang his own songs, with considerable applause, was a friend of Garrick and Colman, solicitor to Covent Garden Theatre, and was perhaps the only solicitor whose pictures have appeared regularly at the exhibition of the Royal Academy. He was a man of the highest reputation, in constant demand as an executor or trustee, and “no one was ever known to repent of the confidence reposed in him.” Admirable Crichton as he was, he once attempted a task unsuccessfully. His farce, *The Weathercock*, was unsuccessful, and the author, we are told,<sup>2</sup> “sculked from his acquaintance for a few days and wished the poet to be forgot in the attorney.” Happy the poet who in such distress has such a refuge!

It is to be feared that there are people who would include in their catalogue of books which are not books, among those volumes which no library should be without, the works of William Roscoe; classing them, as Lamb put it, with the Directories and Court Calendars, the works of Soame Jenyns and Flavius Josephus, that learned Jew. As Lamb included Gibbon and Hume also in his list, perhaps the author of *The Life of Lorenzo de' Medici* and *The Life and Pontificate of Leo X.* has no real ground for complaint. But his works, acclaimed in their time as amongst the masterpieces of history, are commonly, if unfairly, ranked nowadays among the dry Bohns of literature. Yet

<sup>1</sup> *An Account of what seemed most remarkable in the five days' peregrinations of the five following persons, viz. Messrs. Tothall, Scott, Hogarth, Thornhill, and Forrest. Begun on Saturday 27 May 1732 and finished on 31st of the same month.* London, 1782 (illustrated by Hogarth).

<sup>2</sup> *Gentleman's Magazine*, 1784, p. 877.



the standard books, when one comes back to them, prove the test. The dry bones live again; and to have written a book which is considered a "standard," even for one generation, is no mean achievement. Not many authors retain their reputation as long as their copyright.

Roscoe was a "self-made" man. His father kept a public-house near Liverpool, and a market-garden, but seems not to have made money from either calling, and did not transmit to his son his liking for field sports. His literary tastes Roscoe derived from his mother. Of his school-days he recalled principally two birchings, one received before he attained the age of six from a schoolmistress, to whom he was carried, he said, "not without violent struggling and opposition." On the second occasion he not only did not struggle, but did not attempt to retire promptly, according to custom, when the birching stopped; and the master, accepting the challenge, resumed the task with added vigour. At the age of twelve Roscoe left school, and for some years he assisted his father to carry potatoes to market; the life of the fields, he declared later, was the happiest lot of man. He devoted his leisure to reading Shakespeare, and the *Spectator*, and the poems of "the matchless Orinda," whose works he possessed before he was thirteen. In his fifteenth year he was called upon to choose a profession, tried bookselling for a month and disliked it—what bookman would choose to spend his life parting with books?—and elected to follow the law. He was articled for six years, and worked hard as became one who had a father and sister to support, but, as was inevitable, found some hours for literature and made and copied drafts not legal in character. On one occasion his

principal, entering the clerks' office, found on Roscoe's desk some verses "On Mr. Shenstone and his Writings," and paid them the ungracious compliment of saying that Roscoe must have copied them from some other writer. The poet studied Greek, Latin, and Italian, and it was then he acquired the liking for Italian history which was afterwards to give him his reputation. But for some years he was chained to business. He was admitted in 1774, at the age of twenty-one, and entered into partnership with Mr. Samuel Aspinall, "who had long been known by the respectability of his practice," and soon he contemplated partnership of another sort with Miss Jane Griffies, in whose tender breast, he said, each fairer virtue (as well as Roscoe himself) ever found a place. That was in a sonnet "fabricated"—fabricated, quotha!—"in about ten minutes." In the same light-hearted vein he addressed to her other verses, which show her to have possessed homely qualities as well as the fairer virtues. Parodying his favourite Shenstone, he wrote:—

"A present I've bought for my fair,  
 An inkstand of curious device,  
 But to tell what it cost I forbear,  
 She'll say 'twas a barbarous price.

For he ne'er could be true, she averr'd,  
 Who in nicknacks his money would spend,  
 And I loved her the more when I heard  
 Such savingness at her tongue's end."

There was need for thrift. Roscoe's income sufficed to support the relatives dependent on him, but was not enough for a second establishment, and the engagement had to be long. Notwithstanding this, Miss Griffies was anxious—and it raises one's admiration for her to the highest pitch—to use the opportunity of a visit to

London to buy books for her future husband, and she searched shops and catalogues for the Elzevir editions he desired. So admirable a woman deserved the happiness which her marriage, celebrated in 1781, brought to her. She had still at times to remind her husband of the need for economy, but when Roscoe, having a year later to go to London, reproached himself for extravagance in his purchases of prints and books, she had the magnanimity to insist that the expenditure was necessary and proper. The visit to London gave Roscoe the opportunity of seeing what probably no one had seen since the time of Lord Chief-Justice North. Lord Mansfield insisted on sitting on Whit Monday and Tuesday; counsel insisted on taking a holiday, and Lord Mansfield allowed the attorneys to conduct the causes: "most extraordinary figures some of them cut," said Roscoe.

For some years he stuck to business, though he found time to take part in founding literary and artistic societies and in politics, boldly advocating the abolition of slavery in spite of Liverpool's interest in its maintenance. But in 1789 he recurred to a plan he had early formed of writing the life of Lorenzo de' Medici. There were many difficulties in his way. He belonged to a profession whose worst feature is that it ties the practitioner to his office; he was successful enough to have little leisure; he needed to refer to many books, and Liverpool had no public library. The last obstacle was overcome by the help of a friend living near Florence, who searched the Italian records for him. Roscoe, of course, wished to visit Italy himself, but even when tempting invitations came he was unable to accept. He had given hostages; a wife and eight children held him in Liverpool. But by 1793

the book, in spite of difficulties, was written. It was submitted to the Misses Berry, who showed it to Lord Orford, who highly approved. It was published, and the approbation became universal. The London agent of the publisher said he had never since he commenced business given so much offence as by his inability to get copies from Liverpool as quickly as they were wanted. All the critics praised the book; it was translated into Italian, German, and French; it was reprinted in America; and the fortunate author received compliments as warm from the scholars of Italy as from his own countrymen.

To have written *The Life of Lorenzo de' Medici* while engaged in practice was a great achievement. But the book was no sooner published than Roscoe determined to retire from his profession. His reasons were many. First, and principally, he cared little for the law. The more he saw of business, he said, the more he lamented the weakness and depravity of the human heart. He was disgusted with a profession which afforded him a continual opportunity of observing the folly and villainy of mankind. These bitter expressions were written when some piece of business had gone awry; doubtless at another time he would have recalled the compensating occasions which the lawyer has of noting the prudence and kindness of men. But Roscoe had other and contradictory motives. There was an opportunity of disposing of his practice on favourable terms; he had the bookman's longing for leisure in his library; he was engaged in draining Chat and Trafford Mosses, and he had the business man's desire to supervise in person the work in hand. Perhaps, too, he had some idea of going to the bar—he kept one term—and thought of the greater chance of distinction and of

public service which the "higher branch" affords. All these combined to induce him to retire. In later years he became a member of Parliament, but disliked it, and a banker, but was ultimately ruined by it. These later years, and his later books, belong not to attorneydom, though his name was made familiar in both branches of the profession by children who inherited his ability. His honourable efforts on behalf of the creditors of his banking firm were as honourably requited, and the activity of his mind lasted until his death in 1831. His *Life of Leo X.* appeared in 1805; he published, among other things, verses and a book on botany. Of the poems "The Butterfly's Ball" is the best known; but the sonnet on parting with his books, that tragedy of tragedies for a literary man, is as pleasing in its high courage and fortitude.

"As one who destined from his friends to part,  
 Regrets his loss, yet hopes again ere while  
 To share their converse and enjoy their smile,  
 And tempers as he may affliction's dart;  
 Thus, loved associates! chiefs of elder art!  
 Teachers of wisdom! who could once beguile  
 My tedious hours and lighten every toil,  
 I now resign you, nor with fainting heart;  
 For pass a few short years, or days, or hours,  
 And happier seasons may their dawn unfold,  
 And all your sacred fellowship restore;  
 When freed from earth, unlimited its powers,  
 Mind shall with mind direct communion hold,  
 And kindred spirits meet to part no more."

And there is a charm, not always found in efforts to reproduce the old masters, in his "Imitation of Sir Walter Raleigh":—

"In fieldis greene,  
 Silvered with hawthorne white,  
 To walk alone, and meditate unseene,  
 Is my delyte;



O'er upland hills  
 With painful feet to straine,  
 And see great shippes, whose sails the light wind fills,  
 Or distant mayne ;

Or whenne the Sun  
 Climbs to his chamber high,  
 O'er willow banks, where shallow rivers run,  
 Creepe silent bye."

Another attorney who laboured conscientiously and with distinction was Sharon Turner (1768-1847), whose *History of England from the Earliest Period to the Norman Conquest*, and other historical works, represented many years of study in fields then less familiar, pursued in such leisure as a busy life affords, every hour he could spare from professional work being spent at the British Museum. It is the fate of the pioneer to find his work eclipsed by those to whom he points the way, and in the study of Anglo-Saxon institutions Mr. Turner was the pioneer. His books, like Roscoe's, Time may have superseded, or at least neglected. But the author enjoyed so much success as is afforded by a considerable reputation among scholars, testified, moreover, by a Civil List Pension. Southey declared that so much new information had never been given in one historical work as in his history. And if it is not now read, the judgment of modern critics insists upon the advance made by him in historical methods.

Professionally, too, he was of service to letters, and was engaged in the work which must have been most welcome to him as a literary man. Mr. Murray consulted him on the questions where literature meets the law, and especially when it was feared that Byron might be held not entitled to copyright. He guided the *Quarterly*, too, in its young days to avoid the perils

of libel actions, and, to his honour, deprecated undue severity in judgment.

Much less reward and reputation were won in his own lifetime by another member of the profession, who essayed a more popular art. Indeed, the life of John Tobin would have been merely pathetic, but for the native sweetness of temper and unfailing cheerfulness apparent in even the slight record of his life which remains. He wrote fourteen plays; of these twelve were rejected, and the one success which keeps his memory green, or at least not quite withered, came after his too early death.

Theobald had been dead twenty-six years when, in 1770, Tobin, the next attorney to make any mark in the drama, was born at Salisbury. His father, who, as Miss Benger tells us, "had received an education such as is rarely bestowed on a West Indian merchant," transmitted to his son an enthusiastic admiration for the poets, but not a vigorous constitution. Angling was the young Tobin's most active occupation as a boy, and it happened that, "misled by his sedentary habits and apparently unambitious temper," his friends conceived him to be exactly fitted for a solicitor's office. He was articled to "an eminent solicitor in Lincoln's Inn," whose office, he said, abounded in business and employed ten clerks. The young countryman, though "domesticated in a highly respectable family," found life in London lonely and dull. Ten hours a day of office work proved fatiguing, but he recognised that the profession, "though subject to the greatest abuse, requires more attention than almost any other." For a time he entered into the business with zest, but, his biographer declares, after a time "ceased to regard with complacency his future advancement in a profes-

sion in which he discovered nothing to satisfy the mind or interest the heart." It is, we may be sure, the lady who speaks. Tobin, who knew, would not so have spoken of so interesting a calling. He was still diligent in business, and surpassed every other clerk in the "celerity and correctness" of his copying; but he had, it seems, the trick of thinking of other matters while he copied, and "by this mental evasion completely frustrated the object for which he had been placed in a solicitor's office." So says the biographer, though this again can hardly have been the fact, for he entered into partnership with his principal (insisting that a senior clerk who also had claims should be brought in on equal terms) and continued to practise until his health gave way.

Yet his real life was lived not in Lincoln's Inn but at his chambers, where from nine o'clock he was free to dream of and work for success on the stage. While he was yet fresh to London, and leisure and perhaps pocket-money were scarce, he went once or twice to "the disputing clubs," but more often—indeed constantly—to the theatre, generally once or twice a week, at half-price. Later, he not only attended every first night, but read and ransacked all dramatic literature. And, of course, he wrote. When he was attending the Courts the idea of a new scene would occur to him; during a walk the first stanza of a song would be composed, to be written in his notebook ere night. Like most young dramatists, he found the drama in a bad way. The theatres, indeed, were prosperous; but they suffered from ills such as we have heard lamented more than a century later. New pieces were generally bad; the poet was of less importance than the machinist or stage carpenter; the taste for luxury and spectacle made



the production of plays unduly expensive. A knowledge of stage tricks was more valuable than imagination or observation; comedies were *made*, not *written*; the taste for opera, or rather "incoherent series of extravagance and incongruity under the name of opera," caused good authors to be neglected, and so forth. Tobin tried all kinds of plays in turn. During his articles he wrote a farce, the one play which was produced in his lifetime, and it ran for one night, at a benefit. Then followed in 1794 a tragedy in four acts. As that was, even in the young author's own judgment, unlikely to gain the stage, he tried next a comic opera of gypsy life. Covent Garden rejected this, and Tobin "fortified himself against disappointment" by writing another, *The Robbery, or Yours or Mine*. Like later authors, he was disgusted by the general insipidity of operatic pieces, and determined to distinguish his by investing it with the *vis comica*. That did not prevent the insertion of a song pretty and simple enough to have pleased any audience.

"As men who long at sea have been,  
Kindle at nature's robes of green;  
As joys the pilgrim's thirsting soul  
To hear the living waters roll;  
As mothers clasp their infants dear  
And eye them thro' a joyful tear;  
So lovers meet—  
With rapture greet.

As maids with midnight vigils pale  
Shut up some sweet love-woven tale;  
As anglers at day's parting gleam  
Still linger o'er the darkling stream;  
As exiles bid the world farewell  
Where all their fondest wishes dwell;  
So lovers part  
With breaking heart."



This piece also failed to attract the managers; so Tobin abandoned opera, that "over-populous suburb of the drama," for comedy. *The Faro Table* was read and approved by Sheridan, and accepted for the next season, but was ultimately rejected because of a likeness to *The School for Scandal*, and to a real faro table kept by a titled dowager of whose existence Tobin had never heard—perhaps the lady subsequently brought before Lord Kenyon. Other ventures were no more fortunate. Another comedy, *The Reconciliation*, failed to please Tobin's own domestic circle; *The Undertaker*—a farce!—was never acted; *The Curfew* was rejected by the authorities at Drury Lane; and *The Indian*, a play founded on the romantic career of General Bowles, who had been made a Sachem and afterwards "accredited ambassador for the Creeks and Cherokees to his Britannic Majesty," was also rejected. This common fate was shared by *The Fishermen*, an opera, and *The School for Authors*, a comedy.

Tobin was neither soured nor dejected by failure, and continued writing. When his friends suggested he was neglecting clients for the children of his imagination, who neither paid nor earned fees, he replied cheerfully that he would yet leave good *copyhold* property, a pun still possible when the term "copyright" had scarcely acquired a settlement in the language. In his early days Sheridan and Congreve had been Tobin's models, but later his admiration was reserved for "Shakespeare and Nature." The conversation at his rooms in Barnard's Inn turned once on the possibility of resuscitating the old English comedy as it was "in the days of Shakespeare and Fletcher," a thought which afterwards brought reputa-



tion to Sheridan Knowles, though one gathers from Lord Lytton's complaint, that Peel

“ . . . pensions Tennyson while starves a Knowles,”

that even to him it brought no fortune. Tobin answered the question by writing *The Honeymoon*, a play destined to be played “in every theatre in the kingdom,” but at first rejected both at Covent Garden and Drury Lane. Illness now drove Tobin to the country; consumption threatened, and in 1804 he wintered in Cornwall, projecting there an edition of Shakespeare. A voyage to the West Indies was recommended; when about to embark at Bristol, Tobin received the unexpected news that his last play had on reconsideration been accepted at Drury Lane. But the author was too ill to write the required prologue and epilogue, and soon after the vessel left Cork he died.

Seven weeks later, on 31st January, 1805, *The Honeymoon* was produced. Most critics from its design would have foretold failure. It is not merely pseudo-antique; the author borrows unblushingly. Of its three love stories two are adaptations unconcealed: Duke Aranza and Juliana are taken from *The Taming of the Shrew* and *Rule a Wife and Have a Wife*, Zamora is a transcript from *Twelfth Night*, and critics have traced other portions to at least three different sources; they might have added that *The Lady of Lyons* is robbed “by anticipation.” The critics complain, too, of the construction, and urge that the three love stories are but slightly connected. Yet the play is a success. Among dramas of the second rank it stands high, and in a national theatre, would still be played, and not merely as of historic interest. It is full of spirit; its verse is easy; the story interests and is told

with gusto. One speech has become so familiar as to stand the type of robustious virtue and manliness.

“Beat you !

The man that lays his hand upon a woman  
Save in the way of kindness, is a wretch  
Whom 'twere gross flattery to call a coward.  
So, madam, I'll talk to you. I'll not beat you.”

Rolando, the woman-hater, rails so that even Petruchio could not outdo him.

*Rolando.*

I met three women—

I marvel much they suffer them to walk  
Loose in the streets, while other untam'd monsters  
Are kept in cages—three loud talking women !  
They were discoursing of the newest fashions,  
And their tongues went like—I have since been thinking,  
What most that active member of a woman  
Of mortal things resembles.

*Count.*

Have you found it ?

*Rol.* Umph ! not exactly—something like a smoke-jack,  
For it goes ever without winding up :  
But that wears out in time—there fails the simile.  
Next I bethought me of a water-mill ;  
But that stands still on Sundays ; woman's tongue  
Needs no reviving Sabbath—and besides  
A mill, to give it motion, waits for grist ;  
Now whether she has aught to say or no,  
A woman's tongue will go for exercise.  
In short, I came to this conclusion :  
Most earthly things have their similitudes,  
But woman's tongue is yet incomparable.

The taming of Tobin's shrew is a process less rough and less difficult than the cure of Katharine. But when Rolando hears her husband has achieved it, and with no weapon but words, he breaks out again—his own subjugation being yet deferred for a scene or two.

"With words? why, then he must invent a language  
 Which yet the learned have no glimpses of.  
 Fasting and fustigation may do something;  
 I've heard that death will quiet some of them;  
 But words! mere words! cool'd by the breath of man!  
 He may preach tame a howling wilderness;  
 Silence a full-mouth'd battery with snow-balls;  
 Quench fire with oil; with his repelling breath  
 Puff back the northern blast: whistle 'gainst thunder:  
 These things are feasible. But still a woman  
 With the nine parts of speech!—"

So popular an appeal should have dispelled doubt;  
 but when the manuscript, "thrown among the dusty  
 piles of the condemned cell," had in an emergency  
 fallen "by mere chance a second time under the notice of  
 the turnkey," there was no great expectation of success.  
 After the first rehearsal the actors' opinion of the play  
 improved, and its performance was a brilliant triumph.  
 It was acted twenty-eight times in the season, twice  
 by royal command. Miss Duncan appeared as Juliana,  
 Miss Mellon as Volante; the part of the assumed  
 Duke was long a favourite with comedians; and the  
 performance of Elliston, "joyousest of once embodied  
 spirits," who was Duke Aranza, is said to have been  
 the perfection of art. The inevitable prologue was  
 supplied by the author's friend, Sir Humphry Davy,  
 and was, one would think, but a melancholy prelude  
 to a comedy.

"He, though your loftiest plaudits you should raise,  
 He cannot thank you for the meed of praise.  
 Rapture he cannot feel, nor fear, nor shame,  
 Connected with his love of earthly fame,—  
 He is no more."

That an author, after ten years of struggle and  
 failure, should have died on the eve of such success

might have added a chapter to the calamities of authors.

“ Poor Tobin died, alas ! too soon,  
 Ere with chaste rays his *Honey Moon*  
 Had shone to glad the nation :  
 Others, I will not mention who,  
 For many a year may (*entre nous*)  
 Outlive their own damnation.”

So wrote another attorney who had a very different fate.

James Smith (1775–1829) lives in literature by virtue of a share in a single book, and that a book which can be read at a single sitting. He and his brother—“the two Mr. Smiths of the City,” as Miss Austen called them—wrote *Rejected Addresses* at high pressure, got their parodies printed and published in haste, and lived for many years after, accepted wits. They were fortunate in their opportunity. A vacancy in the laureateship is the parodist’s great chance, but the two Mr. Smiths found an occasion even more fortunate. Poetry appeals to few, but the theatre is a national possession. Drury Lane had been burned down, the popular playhouse was now to be reopened, and London was expectant. A genuine competition among the bards for an address to be recited on the first night had been invited by public advertisement, and it was known that poets in plenty had competed. A chance remark made after dinner to James Smith by a friend who was secretary at the theatre, suggesting that he should parody these competitive poems, was the origin of *Rejected Addresses*. In haste the brothers divided the task, in haste they wrote, in haste they printed, and in six weeks they were famous.

The author’s preface described the verses as productions of the Musæ Londinenses ; and, indeed, the

Smiths were thorough Londoners. James was born in Fen Court, passed his youth in Fenchurch Street, in Frederick's Place, Old Jewry, Holloway, and Basinghall Street; he went to school at Tower Street, at Hackney, Camberwell, and Chigwell; he practised for many years in Austin Friars, and he lived his later life and died in Craven Street. And he was a Londoner by conviction as well as the accidents of birth and occupation. He had a rooted objection to "grinding the gravel" of the country. In his *London Lyrics* he defended the town against even the rival attractions of Brighton. To his friends he declared that London was the best place in summer and the only place in winter. To meet a friend he would journey once a year to Yorkshire; and he could be happy—as who could not?—at Shere, sitting for hours under his favourite birch tree in a landscape which, he said, was not only umbrageous in itself but cast all other places in the shade. But the best place for him was his own arm-chair at his club; that was his true home.

He was as much bound to the law as to London. He was a solicitor himself, the son of a solicitor, and connected with others. Robert Smith, his father, was the model successful professional man, possessing virtues of the steady, serviceable type which win clients' confidence, and ability more than sufficient to command their respect. His interest in literature, science, and the world was vivid enough to keep temper sweet and life interesting, despite the insistent duties of his vocation. Articled at eighteen, he served for five years from 9 A.M. to 9 P.M., lived on £1 a week, but contrived to visit France in the long vacation. There he saw the royal family, having attired himself for the occasion in a suit of "maroon-coloured silk



(*soie de la Reine*), a sword and a hair-bag," with a *chapeau de bras*. Admitted a solicitor in 1770, he promptly commenced practice, married judiciously, and settled down to a long and prosperous professional career. The record soon shows him concerned for the Hand-in-Hand Insurance Company and solicitor to the Board of Ordnance. How he secured such valuable clients is not told us; probably he had the inestimable quality of luck. Virtue, we know, abides up three pair of stairs, but the firm of Merit and Fortune has its brass-plate level with the pedestrian's eye. Robert Smith continued to practise till 1818, retiring only when he had secured for his son the reversion of his best professional appointment. Through several years of leisure he remained interested in literature and happy in his friends and family, now, as in his youth, throwing off copies of verses far from contemptible in quality, and tintured, as his sons' biographer delicately puts it, with "a tendency to the humorous."<sup>1</sup>

James Smith, then, was to the manner born. He had but to acquire the necessary knowledge; the business habit, the liking for the law, and the clientèle (as well as the tendency to the humorous) were inherited. Some of the elementary knowledge he acquired at Alfred House Academy, Camberwell, under the care of Mr. Nicholas Wanostrocht, whose son was to achieve immortality as the Felix of *Felix on the Bat*. His own claim to remembrance rests on a prospectus which Mr. Barlow would have envied. It declared that "according to the custom of every academy there are two half-holidays a week, viz. Wednesdays and Satur-

<sup>1</sup> In the very interesting *James and Horace Smith*, by Arthur H. Beavan, 1899.

days. On these occasions, the master himself always accompanies the young gentlemen in the fields; and by pointing out to them the most useful productions of nature, endeavours to lead their minds into a habit of observation and attention. In every little country excursion, a variety of objects, both in the vegetable and animal kingdoms, present themselves and furnish numberless subjects for conversation, and it is the master's employment so to direct his inquiries as to excite the curiosity and improve the understanding of his pupils."

After eighteen months of this sort of thing James Smith was "still rather deficient in writing and book-keeping." The son of a man in Robert Smith's position would nowadays assuredly proceed to Cambridge, but James Smith would have been ineligible as a dissenter, and in the eighteenth century very few solicitors and not many barristers went to the universities. Chigwell took the place of Cambridge—Chigwell which he always loved and often visited, and which occasioned the best of his occasional verses. His school-days finished, James Smith was articled to his father, and in 1798 became an attorney. Very soon he began writing. His earliest recorded essay was "a series of characteristic letters" to the *Gentleman's Magazine*, "detailing the most extraordinary discoveries in natural history and antiquity." They were pure hoaxes, says his biographer. Of course they were. What else should be the result of Mr. Wanostrocht teaching natural history in the time that should have been given to cricket. The cream of the jest for the anonymous and unsuspected author was to see his father gravely perusing the letters, and to hear him and his antiquarian friends gravely discussing

these discoveries. Then James Smith wrote for a weekly paper, which failed, and a review, which also collapsed. He wrote prefaces for plays; he was a friend of that eccentric friend of literature, Mr. Thomas Hill of Sydenham, and wrote for his *Monthly Mirror*. He had thus served his apprenticeship to letters, and was a freeman of the craft, when in 1812 his great chance came.

In the six weeks at their disposal before the opening night of the new theatre, the brothers had to guess at the poets who had competed, to select, as they said, "those writers whose style and habit of thought, being more marked and peculiar, was more capable of exaggeration and distraction"; to write their parodies, to find a publisher, and to get their verses printed. To find a publisher was the hardest task, Mr. Murray and several other leading men rejecting the book. One assured the authors that their trifles were not deficient in smartness; they were well, vastly well, but they would never do. They would not pay for advertising, and without advertising he would not sell fifty copies. It was only through another hint from Mr. Ward that a more confiding publisher was found, and he, undertaking to pay the authors half profits, significantly added "if there should be any." But the book was got out in time, and its success was immediate and complete. The keenness of observation, the neatness of imitation, the felicity of phrase, the humour, were too evident to need the critic's signpost; but the critics were enthusiastic, the public taste was hit, and edition after edition was exhausted. The book took its place as the most successful *jeu d'esprit* in the language; and, astounding though it appears, the first three editions of this little volume of verses brought

its authors a thousand pounds. The poets parodied took the jest in excellent part. "Tell him we forgive him were he twenty times our satirist," wrote Byron to Murray, with regal clemency. The Hon. W. Spencer protested to an apologetic hostess, who feared he would not like to meet his parodist ("one of those men that made that shameful attack"), that he was the very man on earth he should like to know, though he warned Horace Smith, "It's all very well for once, but don't do it again. I had been almost forgotten when you revived me; and now all the newspapers and reviews ring with 'this fashionable trashy author.'" Tom Campbell remonstrated with the parodists for omitting him from their list of victims, and when they urged that it was impossible to parody the finished elegance of his verses, replied, "That's all very well, but I should like to have been among them for all that." Sir Walter Scott declared of the imitation of his poems that he certainly must have written it himself, although he forgot upon what occasion.

The judgment of the critics has declared that the numbers contributed by James excelled those by his brother. True, it was Horace who wrote the imitations of Scott and Byron which excited the admiration of those authors; but the parodies of Wordsworth, Crabbe, and Southey, and the "Hampshire Farmer's Address" by Cobbett, are the gems of the collection. Crabbe's gravity is delightfully echoed in the mock apology. "In the satirical view of life and manners which I occasionally present, my clerical profession has taught me how extremely improper it would be, by any allusion, however slight, to give any uneasiness, however trivial, to any individual, however foolish and wicked." No lines of Crabbe's are now

so well remembered as those written for him by James Smith—

“ John Richard William Alexander Dwyer  
Was footman to Justinian Stubbs, Esquire ; ”

and the attorney took a gentle revenge for the lines in which the cleric denounced the profession of the law in the person of Swallow.

“ Swallow, a poor attorney, brought his boy  
Up at his desk, and gave him his employ.”

So wrote Miss Austen's other literary love. The mocker responded :

“ Emanuel Jennings brought his youngest boy  
Up as a corn-cutter—a safe employ ;  
In Holywell Street, St. Pancras, he was bred  
(At number twenty-seven, it is said),  
Facing the pump and near the Granby's Head.  
He would have bound him to a shop in town,  
But with a premium he could not come down.”

But it is only in “ The Rebuilding. By R. S.,” founded on the Laureate's *The Curse of Kehama*, that marked trace of James Smith's profession is found.

“ Cried Yamen,  
This hand shall tear your paper bonds to pieces,  
Ingross your deeds, assignments, leases,  
My breath shall every line erase  
Soon as I blow the blaze.

The lawyers are met at the Crown and Anchor,  
And Yamen's visage grows blanker and blanker ;  
The lawyers are met at the Anchor and Crown,  
And Yamen's cheek is a russety brown ;  
Vishnoo, now thy work proceeds ;  
The solicitor reads  
And, merit of merit !  
Red wax and green ferret  
Are fixed at the foot of the deeds !



Yamen beheld and shiver'd ;  
 His finger and thumb are cramp'd ;  
 His ear by the flea in't was bitten  
 When he saw by the lawyer's clerk written,  
     Sealed and delivered,            }  
     Being first duly stamped." } }

This is from the conveyancing room ; so, too, " Parchment won't burn ! parchment won't tear ! " and the reference to pounce are reminiscences from the days when James Smith was first set by his father to learn the art and mystery of the law. But then and always James Smith treated the law seriously ; in his office he was a grave person, unlike the wit and man about town he became when the day's work was done. He venerated the judges, we are told—as all solicitors do—and " an invitation to dine with a judge afforded him more gratification than would a command to banquet with Royalty itself." Doubtless such an event would cause emotion in the breast of any attorney ; though James Smith had once dared to spoil a judge's dinner, by calling him down to swear an affidavit, rather than risk disturbance of his own.

Having made so great a success with their first book, the authors were confronted by the almost irresistible temptation to try to repeat it, and the certainty that any second book must be by comparison a failure. When the dinner table was informed that *Horace in London* was uncommonly stupid, by a lady whose deafness had prevented her realising that she spoke in the presence of one of the authors, James Smith declared that he had always been of that opinion. Thenceforth he chose the path of safety, content to have become the companion of the wits and men of letters and fashion of the day. A strikingly handsome presence and a manner said to have been of singular

fascination contributed, doubtless, to social success; and though he remained a bachelor (in spite of his father's pointing by precept and example the advantages of matrimony), he had, said his brother, rather too discursive than too limited an admiration for the sex. "I wish," wrote his father, in an ambiguous sentence, "that he had taken to himself a prudent wife with good connections and a sufficiency of fortune to comfort him in his declining years." James protested in reply—

"What little fame  
Is annexed to my name  
Is derived from *Rejected Addresses*."

So he lived a cheerful celibate. His politics, he said, were those of the lady he had taken down to dinner; and when he was told that he looked a Conservative, he replied that, dependent as he was on crutches, he could hardly belong to the party of movement. For he became a victim to gout, and looked back sadly on the days when he was "a rollicking, lively, fresh-coloured man of the town, running from dinner to rout, and from tavern to opera." In those happy days he never missed a first night at the theatre. But not for him more than others could the happy days be prolonged. Concluding in later years an admirable chapter of reminiscences of Miss Pope, the actress, he said with candid regret that, looking back, it appeared to him he was much happier in the days he recalled than when he wrote. "Lewis, the comedian . . . asked me my age and I answered 'thirty.' 'Stick to that, dear boy,' said the veteran, 'and you will do. I myself was thirty once. I was fool enough to let it go by, and I have regretted it ever since.'" James Smith let it go by too, as his readers have done, all in turn

making the same mistake. In *Chigwell* even his meditations among the tombs had a cheerful turn.

“I’ve met with no ‘afflictions sore.’  
But hold ! methinks ‘too long I bore’ ;  
Here ends my lucubration—  
Content, with David’s son, to know  
That all is vanity below,  
Though not quite all vexation.”

But in *Chigwell Revisited*, when age and illness had come, his was a graver note.

“I fear not, Fate, thy pendent shears.  
There are who pray for length of years ;  
To them, not me, allot ’em.  
Life’s cup is nectar at the brink,  
Midway a palatable drink,  
And wormwood at the bottom.”

Perhaps the emphasis is in part rhetorical ; the draught may not have been more than appetisingly bitter. If his ailments confined him of late years to his club, a club was his favourite place at all ages. There the wits of a later day did not spare him more than time had done. “There,” said *Fraser’s Magazine* in 1834, “sits James Smith with his feet pressing a soft cushion, his elbows dropped by the arms of an easy-chair, his hand resting on a crutch, his hair departed from his head, his nose tinged with the colours of the dawn, and his whole man in a state of that repose which indicates that he has had much work in his way while sojourning in this world. . . . A pleasant, twaddling, pun-making, epigram-manufacturing, extempore-grinding, and pains-taking elderly joker. . . . Among them sits James Smith, regaling them with jokes, which, if they are not quite as good as Falstaff’s, have at least the merit of being as old.”

Dr. Maginn wrote that, and the rest of us may be proud that we did not. But the jokes may have been elderly, as the youngest wits become in time. The address which Smith made in the character of Pliny the Elder speaking to his nephew, impersonated by Lord Lytton, though it had the excuse of being uttered in the drawing-room which that worthy had arranged as a facsimile of one he had seen at Pompeii, seems a little laborious. But the general testimony is that Smith was a real wit; Charles Mathews, for whom he wrote sketches, declared he was the only man who could write clever nonsense. "A thousand pounds for nonsense!" said the author when he received his fee. Even more remunerative was a compliment in two stanzas to a gentleman, who promptly made a codicil leaving him £300. Such remarks as that "*Made-moiselle Mars*" was obviously a *nom de guerre*, or that the friend who gave up writing when he came into his pension, a pen-shunner, may well have set the table roaring gently, and might have helped to save punning from disrepute.

But he kept his jokes till after he had left his office. Having decided to stick to business, he did so gravely. Horace Smith said his brother had no enthusiasm for the law; he was rather a militiaman drawn for service than a volunteer. But he seems to have liked the profession, and, being in it, would play the part well. No man, it was said, looked less like a wit than he when clients found him—an unkindly way of putting it—though when another James Smith established himself in Austin Friars, and a client explained that the identity of name had caused confusion, he permitted himself to reply: "Ah, but I am James the First; he is James the Second—he must abdicate." Roscoe, who had met

him, and Sir George Stephen, who had not, agreed as to the esteem in which he was held.

He allowed himself little gibes at his calling; "Mr. Makepeace was bred an attorney," was one of the ironies he noted in our names. He was not afraid to use technical phrases in his occasional verse, or in *Horace in London*.

"Grim bankruptcy thy path besets,  
With one great seal and three gazettes  
Suspended from her shoulders."

Though Basil Montagu and Lord Macaulay were associated with the court, bankruptcy has never had another singer. James Smith probably always rejoiced that he was not bound to live

"Where poets starve who write for bread,  
And writs are more than poems read."

Though he published no more, James Smith would write for any theatrical friend who was looking for a new ballad neatly turned, and he could rhyme on so uninspiring a theme as "the new cook on trial at Fleming House."

"My lord, an objection I've plump'd on;  
Your sentence must yet be delayed;  
The hearing can't take place at Brompton,  
The venue's improperly laid.

Then nonsuit the case; be impartial,  
And send it to Portsmouth instead.  
In trying a cook by court-martial,  
The court must be held at *Spithead*."

But if technical, he was sound in his views of law for his client. "A litigious fellow in England," he said, "resembles a young rustic in a barn on his first introduction to a flail, with which he belabours his own ears



more than the ears that lie scattered around him, giving himself a good threshing and the corn a bad one." Perhaps the best evidence that James Smith was attached to the law is that he shared the exaggerated disgust with which its members detect legal errors in fiction. On the publication of one of his brother's novels, he wrote: "People who write works of fiction are not bound to know the law, but in framing their catastrophes they should apply to those who do. I could have helped my brother to as pretty a law scene as you shall see on a summer day."

His last act, according to Abraham Hayward, was to sink his property in the purchase of an annuity, when forced to give up practice. He said this might seem like cutting off his brother's children; but then, had not his brother by marrying cut him off? "A want of heart" was detected in James Smith by a critic, who might have found confirmation had he known of the annuity. James Smith was man of business enough to have been annoyed at the badness of the investment, for he died before the first instalment of the annuity became payable. But he had achieved something more difficult even than gaining a great reputation at five-and-twenty—he had lived to be old without losing it. Lady Blessington said that if James Smith had not been a witty man he would have been a great one. Whatever the truth of this, it was enough for him to have won a place which must always be among the first in the gentle art of Parody.

## THE ATTORNEY AS MAN OF LETTERS (III.)

ABOUT the time when James Smith was admitted, there were born three men who in their youth were to do surprising work in letters. It was, indeed, the age of young men. Keats died at twenty-five, Shelley at thirty, Byron at thirty-six; and much of the glory of "that second golden age of English poetry, which was comprised within the first quarter of the nineteenth century," as Mr. Swinburne describes it, is derived from them. "Bliss was it in that dawn to be alive, but to be young was very heaven." Two of the young men were not only contemporaries but friends of Keats. The name of John Hamilton Reynolds (1796-1852) is well known as that of the person to whom many of Keats's letters and some of his verses were addressed. He was born at Shrewsbury, but his father's appointment as writing-master at the Blue Coat School brought him young to London. He was a clerk in an insurance office in Serjeant's Inn, in the happy formative time, spending dull days at a desk, but glorious evenings in Little Britain, reading poetry. Keats and he became bosom friends, "exchanging songs and sonnets." Together they visited Leigh Hunt, and met Hazlitt and Wordsworth, and by the time he was twenty Reynolds had published his third volume of poems. The first, *Safe; an Eastern Tale*, which appeared in 1814, was, of course, influenced by the oriental tales



*H. Pitt*



of Lord Byron. Byron spoke highly of the author, "a youngster and a clever one," though he hinted that Reynolds would have praised the East less if he had seen it. Reynolds then suggested to his friend that they should collaborate in versifying tales from the *Decameron*; Keats liked the plan, and his "Isabella and the Pot of Basil" was a notable result.

The other legal friend of the poet, Charles Jeremiah Wells (1799-1879), was less intimate, and is less known. "Notwithstanding, the truth remains," says Mr. Swinburne, that he "will some day have to be acknowledged among the memorable men of the second great period in our poetry." Wells was a little the junior of Keats and Reynolds, and had been a schoolfellow of Keats's younger brother. Some practical joke which he played on Tom Keats made the elder poet furiously angry, and put an end to relations between them, but for a while they were on intimate terms, and the "Sonnet to a Friend who sent me some Roses" was addressed to the younger man. They met at Hazlitt's lectures; dined, supped, and visited theatres together. All three men were young, and life was attractive. Reynolds, we are told,<sup>1</sup> was "a lad of wild spirits, and his blood was young, and the pipes of the dance tunes were ringing in the streets." So he frequented the theatre, delighted in crowds, in any place where the tide of life—"life in the crude"—ran high, and especially loved the prize-ring, and was one of the patrons of the Fancy he was to celebrate. Of Wells we know less, but we know that, in Mr. Buxton Forman's phrase, "his natural powers of mind and

<sup>1</sup> By Mr. Masfield, who has edited a reprint of *The Fancy*, being the Poetical Remains which Reynolds attributed to the imaginary Peter Corcoran, of Gray's Inn, Student at Law (London, 1905), and gives in his introduction the fullest account of Reynolds's career.



his high animal spirits carried him through all the troubles of boyhood and brought him to the estate of a solicitor." R. H. Horne said that he had extraordinary persuasive powers and an irresistible charm of manner. In conversation, Horne told Mr. Watts-Dunton, Wells had "the readiest wit and richest fancy of any man in London. His talk was simply wonderful. He had only to see a man to make him do anything." Wells certainly achieved the remarkable in persuading publishers to bring out the poem of an unknown man at their own expense.

In 1820 appeared Keats's volume, which contained his poem from Boccaccio. In 1821 Reynolds brought out "The Garden of Florence," in which he inserted two of the pieces he had intended for the joint volume he had proposed. Next year there appeared *Stories after Nature*—the nearest approach, in Dr. Garnett's opinion, to the Italian novelette which our literature can show—of which Wells was the author. Reynolds, perhaps to avoid suspicion of neglecting the profession for which he was destined, did not put his full name on the title-page, but appeared merely as "John Hamilton." Wells had the same reason for anonymity, or pseudonymity, but owing to the infelicity of his godparents, was prevented from using the same simple artifice. He chose to appear as H. L. Howard. Under this pseudonym appeared, at the end of 1823, *Joseph and his Brethren, a Scriptural Drama*. This is the work on which his reputation rests, an extraordinary production for a youth, even if the author's statement, which seems to be doubted, that he was twenty when he wrote it, a little understated his age. But when the book appeared no one took any notice. As Mr. Swinburne puts it, "Not an owl thought it

worth while to stretch his throat, not an ass to lift up his heel against the workman," and for fifty years little more was heard of it. Wells himself, it is said, treated the thing very much as a joke, would not see it through the press, did not much heed even spelling or grammar; and when he called at the publishers' for his manuscript he had forgotten the name by which they knew him!

Yet in the judgment of the critics the poem was a noble one—critics of such authority that one can only record the judgment which has been delivered. The poem is in the Elizabethan manner. "He is as much a born Elizabethan as Keats is a born Greek," said Dr. Garnett; "his style is that of his predecessors, yet his own." Hazlitt declared the book not only original but aboriginal. Mr. Swinburne puts the matter higher, even if one makes allowance for his superb generosity in praise. He cites two lines, which must strike any reader, a description of the declining sun—

"A god gigantic, habited in gold,  
Stepping from off a mount into the sea"—

which, he says, might more naturally be mistaken, even by an expert in verse, for the work of the young Shakespeare than any to be gathered elsewhere in the fields of English poetry. But, he adds, "the crowning triumph of the poem is to be found there where the kernel of the whole story lies. Only once before had such a character as that of the heroine been given with supreme success, and only by him who has given all things rightly, in whom there was no shadow of imperfection or failure. In the Cleopatra of Shakespeare and in the Phraxanor of the present play there is the same imperious conscience of power by right of supreme beauty and supreme strength of

will; the same subtle sweetness of speech; the same delicately rendered effect of perfection in word and gesture, never violated or made harsh even by extreme passion; the same evidence of luxurious and patient pleasure found in all things sensually pleasant; the same capacity of bitter shame and wrath, dormant until the insult of resistance or rebellion has been offered; the same contemptuous incapacity to understand a narrower passion or a more external morality than their own; the same rapid and supple power of practical action. All women in literature after these two seem coarse or trivial when they touch on anything sensual; but in *their* passion there is nothing common or unclean; nothing paltry, no taint of vulgar sin or more vulgar repentance, can touch these two. And this the later poet, at least, has made out of the slightest and thinnest material possible; his original being not only insufficient—the very bare bones of conjecture, the suggestion of a skeleton character—but actually, as far as it was anything at all, so associated with ideas simply ludicrous and base that the very name of ‘Potiphar’s wife’ has the sound of a coarse by-word.”

Wells’s subsequent career was not less curious than its commencement. “He made a butt of Fortune, and failed in life.” At twenty-four he had written a great poem; then for fifty years he published practically nothing. Hazlitt said to him, “By-the-bye, Wells, I have read your poem. I consider that it shows real genius; and—I advise you to stick to your profession.” Wells followed the advice for a while, probably unwillingly.<sup>1</sup> His parents lived at Featherstone Buildings, Holborn, and at that address he practised from 1821 until 1828,

<sup>1</sup> He was forgiving enough to erect a monument to Hazlitt’s memory.

when he migrated to Fenchurch Street. There he stayed until 1832, when he disappeared from legal ken. Having abandoned the law, he went to South Wales, and afterwards to Hertfordshire, where he "gave himself up to field sports." He married, and in 1840 was in Brittany, where he held a professorship at Quimper, but continued to hunt, and sent a couple of articles on Breton subjects to a magazine. He visited London with a view to getting his *Joseph* reprinted, "a small, weather-worn, wiry man, looking like a sportsman or fox-hunter." Doubtless he had then forsaken the Byronic costume appearing in the portrait which accompanied his second edition. He had revised the poem, and interpolated fresh passages, but the copy was lost. Rossetti had praised the book enthusiastically, and later Mr. Swinburne, who had seen the revised version. "The book," says Mr. Gosse, who stands boldly defying an opinion become almost universal, "became a kind of Shibboleth—a rite of initiation into the true poetic culture." "No young poet," adds Mr. Watts-Dunton, "at one time dared to show his face at 16 Cheyne Walk . . . who could not utter the Shibboleth. The so-called pre-Raphaelite poets . . . had to read *Joseph and his Brethren* in order to exist." The one available copy, that at the British Museum, was worn by students sent to it by Rossetti and others. Mr. Meredith was among those who tried to get the book republished. Ultimately in 1876 a second edition appeared. Wells was then old and bedridden, though in high spirits, at Marseilles. He asked Mr. Buxton Forman, of whom he had heard as an admirer, to see the book through the press; and "he shot at me," said the editor, "by successive posts from Marseilles . . . ever fresh fragments and injunctions, but with *carte-blanche*



to do whatever was needful." The book was no sooner issued than the author set to work to revise it again. Again he wrote fresh scenes (as yet still unpublished), "bristling with bad spelling, shaky grammar, defective punctuation, metric irregularity," says Mr. Forman, but "flashing with the light of that inexhaustible mental vigour." He proposed to re-christen the book "Sephenath-Phaanech," actually calling it in correspondence "Joe," his superb Phraxanor "Phraxy," and himself "Joseph."

Wells's wife had died in 1874. After her death he burned the writings of his fifty years of silence. Two tragedies, three volumes of stories, and an epic, all perished in that vast holocaust. Wells himself died in 1879, and his fame must now depend on what the world, at the third time of asking,<sup>1</sup> thinks of the poem he wrote while still little more than a boy. If the world cares little, so did Wells. His revived interest late in life notwithstanding, perhaps no one gifted with "the vision and the faculty divine," and not lacking, in Wordsworth's smug phrase, "the accomplishment of verse," was ever so indifferent to the fate of his work.

Reynolds had been later than Wells in taking to the law. But in 1818 Mr. Fladgate, a relative, offered to take him as a pupil, and James Rice, another legal friend of Keats, paid the fee and promised him a partnership. He had been something of a "Corinthian," a familiar figure in green-rooms, a patron of the prize-fights described with great zest by Mr. Masfield, and a votary of the Muses at the same time.

"I once had thought to have embalm'd my name  
With Poesy ;—to have served the gentle Muses  
With high sincerity : but Fate refuses."

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<sup>1</sup> As re-issued in 1908, with a prefatory note by Mr. Watts-Dunton.



Now he saw himself called on to forsake both the Muses and the nymphs, whoever they may be, who preside over the ring. But after he was articulated he permitted himself some diversion. First came a "sprightly and successful" farce, *One, Two, Three, Four, Five: By Advertisement*. Next he returned to verse. Wordsworth's poem *Peter Bell* had been announced for some time. Reynolds had not forgotten the example of James and Horace Smith.

"The gods have made the brothers Smith poetical,  
As Touchstone saith, though not of either Smith,"

he wrote in *The Fields of Tothill*; the gods had made him poetical too, and he hastened, like them, to produce an anticipatory parody, and was cruel enough to use the poet's own title. He did not, of course, know what the genuine *Peter Bell* was to be; he could not foresee the "primrose by the river's brim," or the faithful, persevering ass, but he knew and disliked the characters appearing in Wordsworth's *Lyrical Ballads*, and his "antenatal" *Peter Bell* did not spare them.

"Betsy Foy, *My* Betsy Foy,  
Is the aunt of Peter Bell!  
And, credit me as I would have you,  
Simon Lee was once his nephew,  
And his niece is Alice Fell.

He is morally related.  
Peter Bell hath country cousins,  
(He had once a worthy mother),  
Bells and Peters by the dozens,  
But Peter Bell he hath no brother.

Not a brother owneth he,  
Peter Bell he hath no brother;  
His mother had no other son,  
No other son e'er called her mother;  
Peter Bell hath brother none."

The parodist killed off all the familiar characters; the Idiot Boy was gone, and Alice Fell, and Barbara Lewthwaite, "and cold as mutton is her lamb." Last of all, on a tombstone, in letters printed by fate,

"He reads, 'Here lieth W. W.,  
Who never more will trouble you, trouble you';"

and the parody concludes :

"Go home, go home,—old Man, go home ;  
Peter, lay thee down at night.  
Thou art happy, Peter Bell,  
Say thy prayers for Alice Fell,  
Thou hast seen a blessed sight."

The man who parodies a classic runs some risk of being accused of blasphemy ; at the least it is as though he chalked his caricature upon a masterpiece. Reynolds's parody was undoubtedly insolent. Wordsworth, it is true, had not yet attained his pedestal, but even then the false *Peter Bell* gave offence to the friends of the poet. It was in every bookseller's window in London, a week in advance, "the type and paper nothing differing from the true one." But Reynolds was relentless. Not content with ridiculing the verses, he must, like his exemplar, have a prose preface. "It is now a period of six-and-twenty years," he said, "since I first wrote some of the most perfect compositions (except certain pieces I have written in my later days) that ever dropped from poetical pen. My heart hath been right and powerful all its years. I never thought an evil or a weak thought in my life. It has been my aim and my achievement to deduce moral thunder from buttercups, daisies, celandines, and (as a poet scarcely inferior to myself hath it) 'such small beer.' Out of sparrows' eggs I have hatched great truths, and

with sextons' barrows have I wheeled into human hearts piles of the mightiest philosophy. . . . To a man of my inveterate morality and independent stamp (of which Stamps I am proud to be a Distributor) the sneers and scoffings of impious Scotchmen,<sup>1</sup> and the neglect of my poor uninspired countrymen, fall as dew upon the thorn (on which plant I have written an immortal stanza or two), and are as fleeting as the spray of the waterfall (touching which waterfall I have composed some great lines which the world will not let die). . . . I love to read my own poetry; it does my heart good.—W. W.”

Coleridge attributed the false *Peter Bell*—it was, of course, anonymous—to Charles Lamb, and Lord Byron ascribed Reynolds's next book, *The Fancy*, to Tom Moore. Coleridge's suspicion was unfair to Lamb, who wrote that he did not relish the parody, the humour was forced, the price excessive, and the suggestion of Wordsworth's authorship impudent. “Is there no law against such rascals?” he asked, and would have had the author whipped at the cart's tail. He could not have anticipated that Shelley would carry on the jest with *Peter Bell the Third*—

“Peter Bells, one, two, and three,  
O'er the wide world wandering be,—  
First the antenatal Peter,  
Wrapt in weeds of the same metre,”

while the last was Shelley's own. Wordsworth wrote that his poem had furnished abundant employment to the witlings; save for “the two Mr. Smiths,” probably no poet ever thought his parodist a wit. The rarity of the exception is the measure of their triumph.

<sup>1</sup> “The ignorant malevolence of cold, lying Scotchmen and stupid Englishmen.”—Reynolds's letter to Keats of 14th October 1818.

In the volume which was so witty that Lord Byron thought none but Tom Moore could have written it, Reynolds was using his knowledge of the ring, and apparently intending to bid farewell both to it and to literature, settling down at last to be an industrious apprentice. In *The Fields of Tothill*, after alluding to the Term Reports, he wrote:—

“The reason why I quote authorities,  
 And give as upon evidence my statement,  
 Is that my practice rather that way lies ;  
 Though, God knows ! it has puzzled me what Fate meant  
 By mixing me with writs, recoveries,  
 Bills, judgments, pleas, and all the things for hate meant :—  
 But so it is. Though now and then I glean as  
 Much time as my betters from subpœnas.”

He gleaned some time in 1825 to join with Tom Hood, soon to be his brother-in-law, in writing *Odes and Addresses to Great People*, and to write articles for magazines. But then he practically ceased to write. He was now in practice. Mr. Rice kept his promise, and they were in partnership for some years. Then Reynolds's name stands alone in the *Law List*, Mr. Rice having given up a lucrative practice in his favour ; another partner's name appears, and in one year disappears, and in 1833 Reynolds ceased to practise. Things had not gone well with him. He was never clearly quit of his old love, it was said, nor cordially on with the new. The law spoiled his literature, the critic declared, and his love of literature and society “interfered with the drudging duties of the lawyer.” Mr. Rice's generosity gave him a chance, but he “threw away this certain fortune,” said a paper after his death, the writer taking the layman's view of law. Health failed, and Reynolds accepted a clerkship in the County Court at Newport, Isle of Wight. There

in 1852 he died, after some years embittered, perhaps, by reflections upon the contrast between the brilliant opening of his career—the days when Leigh Hunt could write upon “Three Poets,” Keats, Shelley, and *Reynolds*—and its dim close.

The third of the notable attorney-authors born at the close of the eighteenth century was not destined to live long enough to make any such sad comparisons. Henry Neele (1798–1828) “was the second son of a highly respectable map and heraldic Engraver in the Strand, where he was born January 29th, 1798; and upon his Father removing to Kentish Town, was there sent to School as a daily boarder, and continued at the same Seminary until his education was completed.” At this academy, we are informed, Neele displayed no very devoted application to study of any sort, or even talent for it. It is, of course, not always the brilliant pupil who makes a man of letters; but surely here was an unpromising commencement for a man who, ere he was thirty, was to appear before the world as poet, critic, lecturer, and historical novelist. Leaving the seminary, Neele was articled to an attorney—of course to “a respectable attorney”—was admitted, and commenced practice. He had not, like Wells and Reynolds, the advantage and stimulus of literary acquaintance, but by the time he was nineteen he published a volume of poems, his father, excellent man, paying the expenses. These poems won some praise, one critic declaring Neele’s to be “the name next to be pronounced, perhaps, after those of Chatterton and Kirke White.” Business, ever the object of the young author’s first regard, according to his biographer, did not prevent a new edition of his poems in 1820, or a second volume of verse in 1823. Then came a stream of contributions to the magazines and annuals,



and there followed in 1827 a year of extraordinary literary activity. In the spring Neele delivered at the Russell Institution a series of *Lectures on English Poetry*. The plan had not been formed until the previous winter, and the lectures were written in hot haste. That the young solicitor should have attempted them at all appears sufficiently audacious when one recalls the poets and critics who made that age illustrious in letters. Scott was at the height of his reputation; Byron, Shelley, and Keats were but lately dead; Wordsworth had educated his countrymen to appreciate him; Coleridge and Lamb were writing, and Southey and Leigh Hunt. The preceding decade had seen the appearance of books by all these, and by Crabbe, Moore, Campbell, and Rogers. Carlyle was beginning to be known. Tennyson's first book had just appeared. Coleridge had recently lectured on Shakespeare, and Hazlitt on Poetry and the Poets of the Elizabethan Age. Mr. Neele dared to follow such critics, and to such a generation to "introduce poetry" to notice.

He did it very well, with spirit and gusto, and not without evidence of wide reading. If his idols were already the established favourites, he had his own reasons for praising them. That he expressed his views with the ornate and picturesque rhetoric which was the oratorical fashion of the time, appears from an introductory paragraph. "Nations the most illustrious in Arts and arms, have also been the most celebrated for their cultivation of letters; and when the monuments of those Arts, and the achievements of those arms, have passed away from the face of the earth, they have transmitted their fame to the remotest ages through the medium of Literature alone. The genius of Timanthes lives but in the pages of Pliny; and the sword of Cæsar has been rendered immortal only by

his pen. The canvas fritters into shreds, and the column moulders into ruin; the voice of music is mute; and the beautiful expression of Sculpture a blank and gloomy void: the right hand of the Mechanist forgets its cunning, and the arm of the Warrior becomes powerless in the grave; but the Lyre of the Poet still vibrates; ages listen to his song and honour it: and while the pencil of Apelles, and the chisel of Phidias, and the sword of Cæsar, and the engines of Archimedes, live only in the breath of tradition, or on the page of history, or in some perishable and imperfect fragment; the pen of Homer, or of Virgil, or of Shakespeare, is an instrument of power, as mighty and magical as when first the gifted finger of the Poet grasped it, and with it traced those characters which shall remain unobliterated, until the period when this great globe itself—

‘ And all which it inherit, shall dissolve,  
And, like an insubstantial Pageant faded,  
Leave not a rack behind ! ’ ”

But the lectures were only a small part of the year's work. The author collected and reissued his poems in two volumes, and then in six months produced three volumes of *The Romance of English History*. The effort would not have been contemptible in Scott, even with his facility and accumulated stores of antiquarian knowledge. But Neele was “ confessedly a stranger ” to history; he had to “ read up ” in turn the periods he described, from the time of the Normans to the end of the Wars of the Roses, wading, said his biographer, “ through the obscure Chronicles of antiquity.” The work was done with great spirit and energy, and if the old English was of Wardour Street, it scarcely pretended to be more. There were signs of haste, but



the book had "vitality enough to preserve it from putrefaction," and has been reprinted until our own day. This herculean labour was no sooner finished than the author was at work again with *Blanche of Bourbon: a Romance of Spanish History*, which was added to the second edition of the *English Romance*, and he projected and actually commenced the publication of an edition of Shakespeare.

No one could undergo with impunity such a strain, and Neele's mind gave way. His delusion concerned the business which he had, perhaps, neglected. He imagined himself embarrassed in connection with a bankrupt's estate which had, in fact, been administered with perfect regularity, and he died by his own hand. The *Times* reporter declared that no one enjoyed life with greater zest. When happy in the company of his friends, he seemed "one of those formed to glide through the world unaffected by any of those circumstances which agitate the mind, or unsettle the pursuits of men who boast of a more fiery temperament." Certainly his muse was generally cheerful. He cried, "Come pledge the cup to me, Sweetheart!" and "What can Love be liken'd to?" in the most approved manner of the annuals. But at times his stanzas were more grave.

" Vessels but to havens steer ;  
 Paths denote a resting near ;  
 Rivers flow into the main ;  
 Ice-falls rest upon the plain ;  
 The final end of all is known ;  
 Man to darkness goes alone ;  
 Cloud, and doubt, and mystery  
 Hide his future destiny."

He might well have hoped, given length of years, to do something the world would remember.

Very different in interests and fate was Joseph

Parkes (1796–1865), a Birmingham solicitor, who in the year of Neele's death published his *History of the Court of Chancery*. He took to politics, had the good sense to become a reformer when reform was not only needed but impending, made himself useful as a mediator between the more and less advanced wings of his party, and was made a Taxing Master. But by virtue of his *History*, a laborious undertaking from which he was not deterred by the failure of previous attempts in the same field, he could claim to be a man of letters before he became a man of figures.

No one has attempted to describe fully the career of another contemporary, Sir George Stephen (1794–1879); and certainly nothing less than a volume could do justice to a life replete with so many activities. He was the son of James Stephen, the Master in Chancery, and member of the Clapham Sect eloquently commemorated by Sir James; and he was articled to the eminent house of Freshfields. So connected and under such auspices, he may well have anticipated success when he started practice. He was engaged by the Government in collecting evidence against Queen Caroline, and, as he regretfully said, did not exact such a fee as would readily have been paid. He was solicitor to a society which Parliament had established for assisting the release of prisoners for debt, without attaching any salary to the post; and—as further evidence of professional disinterestedness—the society, while helping to pay poor prisoners' debts, would pay nothing for costs. He took an active part, as became one of his ancestry, in the agitation for the abolition of slavery, taking lessons from O'Connell for the purpose. He established a society to deal in reversionary interests, quarrelled with the directors, and incurred heavy financial losses. Then he went to the bar,



practised for a time at Liverpool, went to Australia and practised there, and there, at an advanced age, died. Sir Leslie Stephen, in his *Life* of his brother, Sir James Fitzjames Stephen, touched in a few lines on this curious uncle of his. He said that Sir George was probably one of those very able men who have the unfortunate quality of converting any combination into which they enter into an explosive compound.

Besides being so much else, Sir George was a ready writer. He wrote on all subjects. Especially he wrote his professional recollections (incurring some censure for indiscreet frankness), and was the first pattern and exemplar of *The Attorney Reminiscent*. He wrote professional books, a digest of County Court Cases, and a book on commercial law; he wrote on public questions and legal matters, on slavery, on the probable effect of the new Poor-Law upon crime, on giving head-money in aid of wages, on bankruptcy and credit, on magisterial reform. He published a pamphlet on the case of Mr. Barber, that professional victim of a notable miscarriage of justice. There seems no limit to the questions on which Sir George was prepared to write. To a series of *Guides to Service* he contributed three volumes, designed to instruct *The Clerk*, *The Groom*, and *The Governess*. He published a *Guide to Jurymen*, to instruct them, too, in their duties. This reached a second edition; would a modern jurymen expend a shilling on guidance? He described *The Adventures of a Gentleman in search of a Horse*—being, says Sir Leslie Stephen, the only member of his family who could clearly distinguish between a horse and a cow—which attained a fifth edition. He published a *Life of Christ*, intended, says the same jesting author, to teach the Australians a little Christianity; and a *Life of his father*, which was mainly



concerned with his own services to, and the ingratitude of, mankind.

Moreover, he brought out a novel—such a novel as is not often seen—*The Jesuit at Cambridge*. It took the view of the Jesuits which, well or ill deserved, was such as might be expected from the Clapham Sect. To redeem the book from any suspicion of frivolity, he described the reconversion of a convert to Roman Catholicism in many pages of strenuous discussion of “the fundamentals” and of the questions at issue between the Churches. Solid footnotes dealt with such questions as the intercession of the saints, the need for a more ornate ritual, and the desirability of restating seven of the articles of the Church in terms “equally safe and far more definite”; a task he would doubtless have undertaken on slight pressure. The Jesuit of the book was a tremendous fellow. He had begun by marrying a nun. Next he (and she) suffered from remorse, but procured pardon and indulgence “on certain terms,” as is said in the secular courts. The terms were onerous. The Jesuit’s property in France was ceded to the convent his wife had left. His English property he retained, on condition that his sons should be brought up as Roman Catholics, “but under a dispensation should propagate that faith from Protestant pulpits.” Moreover, his daughters were to enter convents, unless they married Roman Catholics, who would, for the same purpose, become priests of the English Church. Hence when his two charming daughters met and attracted the hero and his friend, the problem the Jesuit had to solve—for otherwise his English property also was to go to the Church—was to persuade two healthy, average Protestants (1) to change their faith, and then (2) to pretend not to have done so, in order (3) that they might as Protes-

tant clergymen have the better opportunity of persuading others to "go over to Rome." As all this was unknown to the Protestant actors in the story, a very pretty complication arose. And as the daughters *did* know, it was necessary to persuade them to marry men whom they could not help thinking despicable should they accept conditions on which alone marriage was possible. Whether many readers reached the solution one cannot now tell; if they did they probably skipped the dozen pages on Tractarianism with which the book concludes.

The *Guide to Jurymen* was more widely read. We know that the British constitution is largely devoted to getting twelve good men and true into a box. To Sir George Stephen was left the further task of instructing them in their duties. A book by a man of vigorous mind, large legal experience, and a ready pen was bound to have much interesting matter. Sir George insisted on the importance of the oath the jurymen had taken, warned them against class or trade prejudice by recounting cases in which "the sympathy of the shop was too much for the conscience of the jurymen"; explained to them the nature and value of evidence; discussed the policy of requiring a unanimous verdict in view of the fact that "there are not many English consciences that will go four-and-twenty hours without a dinner"; warned them not to be stingy in damages, especially where they were (and are) apt to be, in cases of personal injury; denounced the "cant phrase of 'reasonable and temperate damages,'" which had been heard of late years, and told many interesting stories on the way.

Both in this book and in the still better known *Adventures of an Attorney in Search of a Practice* he was eloquent in denouncing the vulgar prejudice against

attorneys. "One would suppose from the general outcry against lawyers and law, that every man's hand in this country was raised against his neighbour, that attorneys were eternally on the watch to promote such domestic hostility for their own advantage. Vulgar prejudice never gave rise to a greater error. . . . It may be doubted whether there is a tenth part of the litigation in this country, comparatively speaking, that there is in any other civilised state. . . . It may safely be asserted that the number of cases annually tried in our superior courts of record does not average two to each metropolitan attorney of those courts, nor half a case to each member of the profession if all the provincial attorneys are included. Nine-tenths of the attorneys live by guarding their clients against litigation, instead of by fomenting it." The comment to be heard in the courts when a poor plaintiff received assistance in seeking redress against grave injuries, "This is an attorney's action," moved him to wrath. He recalled cases where counsel, as well as attorneys, had acted gratuitously, yet the jury, actuated by prejudice, found for the defendant, the juryman apparently saying to himself, "Because the plaintiff is too poor to be able to pay costs . . . I will allow this miserable pauper to be insulted, abused, and injured, without redress, and give him a farthing damages, to spite his attorney, and teach him never again to be such a villain as to lend his gratuitous aid to the wretched." Some phrase concerning the "visible superiority" of the bar, used in a review of his reminiscences, irritated him greatly. Where, he asked, was the evidence of superiority? The attorney moved unseen. He might possess greater intelligence, knowledge as profound, wit more poignant, retort more keen than the lights of the higher branch. But no one knew

it. His knowledge must be more general, his difficulties were greater, his temptation constant, and the risk of detection, should he fall, but slight. This may be very true, but it seems an odd way of refuting your opponent to say that from the nature of things there can be no evidence against his proposition. "Can it be denied," he asked in a final paragraph, "that talents of the most superior order, and principles of the highest honour, are requisite to carry a man safely through difficulties and snares like these? or that he who has proved by a long career of integrity and success that he possesses them, need little fear a comparison with any class for all those qualities that secure the esteem and respect of mankind?"

If we are entitled to such praise, it seems but a small matter that solicitors can claim to have furnished an editor of *Punch*. Truth to tell, Shirley Brooks (1816-1874), though he passed his examinations, seems to have practised only journalism and literature. He turned off neat occasional humorous verse, and even novels, more easily than he would have drawn deeds. Another solicitor tempted from professional paths was Leopold Lewis (1828-1890), who made one great success with *The Bells*, which furnished Sir Henry Irving with a striking part, and several failures. His other plays and his stories are gone to oblivion; but, said Mr. Downey,<sup>1</sup> he was a most charming fellow when he forgot that he was a distinguished dramatist and a distinguished litterateur. He prided himself on being (unlike contemporaries whom he named, and who were mere copyists) entirely original, and he invented an original test for originality. "'The match I want to arrange,' said Lewis, stroking his great tawny moustache, 'is one which might take place, say, in the Reading

<sup>1</sup> *Twenty Years Ago*. By Edmund Downey. 1905.



Room of the British Museum. Each competitor should be locked into a glass case—a transparent glass case. . . . Before he was locked up he should be carefully examined, even to the shirt cuffs, in order to make it certain he was concealing nothing in the shape of literature.’ Nothing but pen, ink, and paper should be supplied to the man in the glass case. ‘And then let us see,’ said Lewis, ‘who will write original stories or articles. I’d back myself to turn out more copy in a given time, under these conditions, than any man in town. It’s a fine idea, mind you,’ he added, the theatrical instinct and his sense of humour getting the upper hand. ‘A large hall—say the Agricultural Hall—might be hired after a preliminary turn at the British Museum. A lot of people would pay good prices to see So-and-so and So-and-so struggling for ideas.’”

This test would doubtless have left undismayed two gentlemen, happily still with us, whose names have long distinguished the roll, and would have been an ornament to any roll, Sir Theodore Martin and Mr. Theodore Watts-Dunton. Their eminent success in many branches of letters has shown, if proof were needed, that there is no incompatibility between literature and the lower branch, and that the association need not cease with youth. It is true that many men have doffed their singing robes when they assumed professional garb, have ceased to sing when clients came. “How sweet an Ovid was in Murray lost!” More than this, some have thought it necessary, like Blackstone, to bid a ceremonious, even ostentatious, adieu to the Nine, before clients crowded their offices or chambers. Perhaps they exaggerated the clients’ distaste for an adviser addicted to letters, though all the guides to the woolsack insist that Law is a jealous



mistress. Blackstone, it is said, was not a busy man before his lectures made him famous. But it was long before his professorship that he declared himself bound to part from "Gay Queen of Fancy and of Art" who had been the companion of his "tender age."

"Then welcome business, welcome strife,  
Welcome the cares, the thorns of life ;  
The visage wan, the pore-blind sight,  
The toil by day, the lamp by night,  
The tedious forms, the solemn prate,  
The pert dispute, the dull debate,  
The drowsy Bench, the babbling Hall,  
For thee, fair *Justice*, welcome all !"

It is not too uncharitable to suspect some insincerity here, to suggest that with greater candour the author would have addressed his lines not to the Muse, but to the Society of Gentlemen, Practisers in the Courts of Law and Equity. One does not doubt that he was prepared to "welcome business." That was sincere enough. But one may be sure the welcome was rather for the sake of fair Blackstone than fair Justice ; or perhaps, reading the future aright, he meant by "fair Justice" to indicate Mr. Justice Blackstone. In spite of his farewell, it was as a great literary artist that he was to become famous. Following the Vinerian professor, J. H. Reynolds said good-bye to the Muses, doing so in a sonnet which, like his sonnets on Robin Hood, has been, and deserved to be, much admired.

"I have no chill despondence that I am  
Self banished from those rolls of honoring men  
That keep a temperate eye on airy Fame  
And write songs to her with a golden pen.  
I do not wail because the Muses keep  
Their secrets on the top of Helicon,  
Nor do I in my wayward moments weep  
That from my youth Romance is past and gone.

My boat is trimm'd—my sail is set—And I  
 Shall coast the shallows of the tide of Time  
 And rest me happily—where others lie,  
 Who pass oblivious days. No feelings climb  
 Ambitiously within me. Sweet Farewell  
 Be to those Nymphs that on the old Hill dwell."

But these formal farewells are not to be taken too seriously. The truth is, as Reynolds said, that men cease to write not only because business comes, but because youth goes, and with it too often romance is past and gone. The youthful zest of life, the spring of letters, vanishes, the fountain is sealed. The authors have let thirty go by. There is in every man, says the proverb, a poet who dies young, while the man lives on. It is this loss, which only the fortunate escape, and not the growth of business alone, that makes the singer silent. The poorness of the rewards of literature to all but the favoured few has its influence, no doubt; not every one has the faculty, in Reynolds's phrase, like Scott to "make first the verse and then the most of it." The practitioner who finds rates and responsibilities ever rising may announce unblamed his defection from the old Hill, and use the words of George Canning the elder:

"Then welcome Law! poor poesy, farewell!  
 Though in thy cave the loves and graces dwell,  
 One Chancery cause in solid worth outweighs  
 Dryden's strong sense and Pope's harmonious lays."

But if he is fortunate enough to keep his love for books, if the "solid worth" be obtained in moderation, the farewell will not be final. The lawyer will still find time to travel in the realms of gold, and even in his hoarded hours of leisure to add some pages—the history and antiquities of his native borough, maybe—to the world's already overburdened shelves.

## THE ATTORNEY IN THE CONVEYANCING ROOM

IN the conveyancing room the attorney finds a delightful quiet after the storm of the courts. The thunders of the Kenyons and the Kays reverberate here but faintly; here, too, the client shows less asperity than in other provinces of the attorney's activity. If the world has not actually loved the attorney as conveyancer, if it has not wholly spared him reproof, it has at least been here less hostile to him than elsewhere. In the calm of the conveyancing room he may practise his art—an art, like heraldry, but scantily appreciated of the general, yet interesting in itself, and not wholly its own reward. Sir Edward Fry says boldly<sup>1</sup> that it is a fine art, "though the art critics may be few and comparatively voiceless, and though the public capable of appreciating the art be the smallest who appreciate any fine art. It is a fine art, because the conveyancer is master of a peculiar species of composition, which admits in its best estate of a high degree of perfection." It is also a species of composition palpably exposed to animadversion by those who, judging it by an inappropriate standard, condemn it as literature. But that, it is to be feared, is a censure which leaves the attorney "more than usual calm"; and here at his ease he devises the wills and settlements which have so deeply affected the social and economic history of

<sup>1</sup> "Conveyancing," in *Studies by the Way*, 1900.



THE  
CONVEYANCERS  
LIGHT

OR

Exact Presidents for  
all manner of Instru-  
ments and Conveyances  
As they have occasionally  
been Composed by  
the advice of many  
Eminent Lawyers ~  
Both Antient & Moderne  
With  
A CONCORDANCE  
of Yeares from R: 3: untill  
these present tymes very ~  
Usefull.





England, the conveyances, mortgages, and leases which play so important a part in the ownership of land. The client complains, no doubt, of the conveyancer's prolixity and tautology, and unjustly imputes to him an obscurity which it is his special function to avoid. But the same client rejoices secretly in his "writings," the products of the conveyancer's art. Arbuthnot tells us how John Bull admired the fine words in his attorney's bill; John, though he disclaims it, has at least an equal fondness for the brave words in his deeds, and will as soon be without parchments as be tried by piepowders. "Wax and parchment are pretty things," said the professor. The Abstract of Title has become so familiar to John that it is not forgotten even in his hymns, and Dr. Watts, versifying upon the "many mansions," commences his song—

"When I can read my title clear  
To mansions in the skies."

Conveyancing is, moreover, not only a fine but a very ancient art. One may not say that it goes back to the earliest ages, for, as a writer for articulated clerks observes,<sup>1</sup> with an eloquence unusual in law-books:

"In the rude and primitive state of human society, when men were hunters and fishers, there was entertained no notion of an interest in the soil, which could endure beyond the time of actual enjoyment and occupation. Property and possession were then identical; the abandonment of the latter putting an end to the continuance of the former. The subsistence of the invisible right to land apart from its actual occupation was too refined a conception to be in anywise appreciated by a savage roaming in search of his sub-

<sup>1</sup> Wharton, *The Articled Clerk's Manual*, 8th ed., 1851.

sistence, without regular habits or fixed abode; the setting sun leaving him reposing far from the spot where his rising surprised him asleep; yesterday's shelter unremembered ere to-morrow's twilight warns him to seek a scanty slumber beneath a beetling crag or spreading tree."

"It was not," continues this elegant writer, "until social life developed itself in the practice of agriculture, when men began to plant the vine and cultivate the olive, when the rude hut became permanent, a tribe stationary, and community commenced, that an enduring interest or estate in the soil was coveted, sought after, obtained, and defended."

But, at least, it was very long ago that the need for securing evidence of that "interest or estate in the soil" called conveyancing into existence. It is true that when Abraham, on the death of Sarah, had need of "a possession for a burying-place,"<sup>1</sup> it was not upon the written record of his purchase, which is the special work of the conveyancer, that he relied, but upon the recollection of the assembled witnesses of the transaction. Neither parchment nor clay tablet had yet taken the place of notoriety. It was, therefore, "in the audience of the children of Heth, even of all that went in at the gate of his city," that Abraham negotiated for the purchase from Ephron, the son of Zohar, of the cave of Machpelah, in the end of his field. So when, with oriental courtesy, Ephron offered field and cave as a gift, he insisted, "in the presence of the sons of" his "people," that he made the donation. It was again "in the audience of the people of the land," as the chronicler is careful to narrate, that Abraham urged his willingness to pay the full price; and when

<sup>1</sup> Genesis xxiii. 4.

Ephron had stated the purchase-money he would accept ("a piece of land worth four hundred shekels of silver, what is that betwixt thee and me?"), it was doubtless before the same witnesses that Abraham weighed the shekels, current money of the merchant. So "the field of Ephron, which was in Machpelah, which was before Mamre, the field and the cave that was therein, and all the trees that were in the field, that were in all the border thereof round about, were made sure unto Abraham for a possession in the presence of the children of Heth, before all that went in at the gate of his city." The particularity in the description of the purchased property, at once the duty and the opprobrium of the conveyancer—the field, and the cave, and the trees in the field, and the trees in all the border—make the transaction seem astonishingly modern;<sup>1</sup> and the essence of conveyancing is seen in the making sure, the safe and efficient transfer from man to man, of property which cannot be taken bodily away.

But, as Sir Edward Fry has pointed out, when, some twelve centuries later, Jeremiah purchased from his cousin his field in Anathoth, in the land of Benjamin, a system of conveyancing had grown up.<sup>2</sup> "I subscribed the deed," says the prophet, "and sealed it, and called witnesses, and weighed the money in the balances. So I took the deed of the purchase, both that which was sealed, according to the law and custom, and that which was open, and I delivered the deed of the purchase unto Baruch . . . in the presence of Hanameel mine uncle's son [the vendor], and in the

<sup>1</sup> Barrington (*Observations upon Statutes*) says this conveyance "hath many unnecessary and redundant words. . . . The parcels in a modern conveyance of 1766 cannot well be more minutely particularized."

<sup>2</sup> Jeremiah xxxii.

presence of the witnesses that subscribed the deed of the purchase, before all the Jews that sat in the court of the guard." Baruch was to put "the evidences of the purchase in an earthen vessel, that they might continue many days. There were thus two deeds,<sup>1</sup> but no delivery of possession, for vendor and purchaser were prisoners, and the Babylonians were probably in possession of the property sold. Grant, in the language of English law, had taken the place of livery of seisin, and, as the Lord Justice says, "the art of conveyancing has come in between Abraham and Jeremiah." Publicity is still desired, but principally for the delivery of the deeds to Baruch, the transaction itself being attested by the documents. Even the modern deed-box has its counterpart in the earthen vessel.

This change from public ceremony on sale to written record must have occurred in the evolution of every community. The oldest code in the world, the laws of Hammurabi, required writing—"bonds"—for many transactions less solemn than the transfer of land, *e.g.* for deposit of money, and even made it criminal to buy goods from a man's son or servant without witness and bonds.<sup>2</sup> But the laws of Hammurabi applied, it is said, to a state more developed and commercial than the agricultural, tribal community of

<sup>1</sup> Perhaps, like Egyptian documents of sale, one transferred the ownership, the other the right to possession. Or, it has been suggested, the open document was retained by the purchaser as evidence; the other, sealed to prevent fraud or alteration, was in normal times deposited in a public office. The prophet was trying to set an example of confidence; for he foretold returning prosperity, with sale of land as its evidence. "Fields shall be bought in this land, whereof ye say, It is desolate, without man or beast; it is given into the hands of the Chaldeans. Men shall buy fields for money, and subscribe deeds, and seal them, and call witnesses."

<sup>2</sup> So 'Tobit, in anticipation of his son's marriage "took a book and wrote an instrument of covenants and sealed it" (Tobit vii. 14).



Israel. In England the policy of the feudal system required publicity on the sale of land, and there was a long struggle before private transfer by deed supplanted formal and public delivery, and the conveyancer attained his full importance. *De Donis* and *Taltarum*, the Statute of Leases and the Statute of Enrolments, and Serjeant Moore, with his device of Lease and Release—landmarks in our legal history so painfully studied by candidates before examination, so cheerfully forgotten after—had to come before conveyancing was mainly matter for the conveyancing room. By different roads other peoples had centuries before reached the same goal. Coke and Blackstone would have been surprised to read the Assyrian, Babylonian, and Egyptian records of sale, which have become known to us;<sup>1</sup> the minute description of the property and its boundaries, the careful identification of the “parties,” their callings and personal appearance (“of the guards,” “middle height with a poor beard”), the record of the price, of the notary engaged and his fee,<sup>2</sup> the seal or nail-mark of the vendor in the yet unbaked clay, the renunciation of the right to repurchase by the vendor and his family, the conveyancer’s imprecations (taking the place of our covenants for title) on him who attempted to repudiate the bargain. These things were centuries old ere Coke and Bracton wrote, or Edward or Alfred gave us laws.

Conveyancing, then, is an ancient art. It is ancient even in England, but it was not always the attorney’s.

<sup>1</sup> Though, we are told, conveyancing is—

“A subject *Coke* himself supposes  
To be at least as old as *Moses*.”

<sup>2</sup> Sometimes as much as five per cent. of the purchase money; presumably there was neither Remuneration Act nor Taxing Master in Babylon,



As late as the time of James I. it was held that to say an attorney made false writings was not a slander on him in his trade, for it was no part of an attorney's business to make writings. In theory attorneys of old were always present when the courts were sitting; hence their privilege of being sued only in their own court. How, asked a later critic, could they then have been engaged in preparing deeds? In mediæval times the clergy, no doubt, practised conveyancing; "an acquaintance with the law of the land sufficient to enable one to draw a charter of feoffment, a lease, a mortgage, a will, was in all likelihood a common enough accomplishment among the clergy, regular and secular," say the authors of the *History of English Law*. Clerical influence having waned, Roger North claimed that conveyancing was the proper function of counsel. But counsel being, like the Common Pleas, in one place, and clients in many and distant places, the gentlemen of the long robe must always have shared the duty with others.<sup>1</sup> Indeed, when the printed books of precedents first appear, to throw light on, as well as for, conveyancers, these scarcely seem to have constituted a profession at all. Any one might prepare deeds; every one thought himself qualified to do so. West<sup>2</sup> said the maker of instruments had been for the most part called scribe, scrivener, notary, clerk, or writer. Sheppard's *Touchstone* took the matter further, and declared that the task was assumed by ignorant vicars, blacksmiths, carpenters, and weavers. The schoolmaster, of course, officiated, and, according to West, parish clerks and even schoolboys.

<sup>1</sup> Lord Mansfield said there had been formerly counsel living in the country engaged in conveyancing practice. But this must have applied only to the principal towns.

<sup>2</sup> *Symbolæographia*, 1594,

Perhaps it was the efforts of these last which induced the scriveners, at the end of the fifteenth century, to require that the apprentices to the art should have a "perfect congruity of grammar." West stated the requirements of the profession in loftier terms. The maker of instruments must be prudent; wisdom must be his guide; he must avoid those unfriendly neighbours of prudence, temerity, which led to "doing all things in hurlie-burlie without counsel," and wiliness, which was "both wise and cunning but without honesty." Justice must be the scrivener's aim. It might be thought, the author said, that he put the necessary qualities of the calling too high; but if asked, "Would you have your scrivener endued with that perfection of wisdom and justice which the philosophers require in a virtuous or the divines in a good man?" he answered, "I wish it not to him only, but to all men." The author of *The Conveyancer's Light*<sup>1</sup> was less exacting. The well-penning and due executing of common assurances, he said, conduced to the happiness of the people of this realm, as was not unknown to the practisers of the law, and indeed to all men. Herne, the author of *The Conveyancer's Light*,<sup>2</sup> himself penned well, if one may accept the judgment of Mr. Pepys, who read Herne's book on the Statute of Charitable Uses, mightily to his satisfaction.

The scriveners troubled themselves little concerning well-penning, one may conjecture, except in the sense

<sup>1</sup> "*The Conveyancer's Light*, or Exact Presidents for all manner of Instruments and Conveyances as they have occasionally been composed by the advice of many eminent Lawyers, Both ancient and modern, with a Concordance of Years from Rd. 3rd until these present tymes, very usefull" (1664). The title is obviously imitated from the well-known *Lawyer's Light* of Mr. Justice Doderidge. This, though the popular title, was not the author's own; he styled his book *The English Lawyer*.

<sup>2</sup> He claimed the book in the preface to his later volume, *The Modern Assurancer*.

of calligraphy. Conveyancing was a business with them, not an art. They frequently "kept shop"; they were to keep one shop only, by their rules, and did their best to exclude foreigners, *i.e.* non-freemen, from their calling. Incorporated as a City Company in 1617, they were in origin of much earlier date, the good men of the mystery of Writers of the Court Letter having in 1373 obtained from the Common Council orders regulating their calling. Before they commenced business they were to prove their competence to the Lord Mayor and Aldermen, who thus became the fathers of all examiners in law. To the trade of making deeds the scriveners added the more profitable one of banking and lending money, perhaps usuriously. At least some of them grew wealthy; it was a "prodigious rich scrivener" whom Evelyn visited at his country house. The smaller men, according to a complaint of 1683, took a half-shop, furnished it with a ream of paper, half-a-score pair of indentures, 100 quills, a bottle of ink, a pumice stone and a penknife, and were thereupon as absolute scribes as any one. Perhaps it was because of their efforts that *The Compleat Clark and Scrivener's Guide* (1655) declared that every day's sad experience demonstrated the losses and vexations of those who had weak and imperfect conveyances.

The books of precedents, which were first printed in the sixteenth century, and mark the beginning of modern conveyancing, must have served to raise the general level of the conveyancer's art. For as the compiler of *The Conveyancer's Light* said, ingeniously combining a compliment to the attorneys with a hint that they would be the better for instruction, the drawing of settlements of estates, joyntures, deeds

of purchase, and other instruments, was oftentimes committed to attorneys and counsellors' clerks, who, though very able, oftentimes met with difficult and unusual kinds of deeds. So he gave them his book, "fully fraught with all manner of Limitations of Uses, Conditions, Powers, Provisoos and other extraordinary clauses used in great Settlements," which settlements, he said, were the most considerable and weighty matters of which he treated. Printed dictionaries, we are told, grew out of manuscript lists of difficult words, lists themselves compiled from marginal glosses made by earlier readers. In like fashion, the printed books of precedents had doubtless been preceded by manuscript collections made by the conveyancers. Every rich religious house probably had its own collection of common forms.<sup>1</sup> In some cases the authorship of the precedents contained in the printed books is preserved; *The Conveyancer's Light* leads off with "a grant of an annuity penned by Mr. Edmond Plowden," which in 1664 was already of a respectable age. "This Indenture," it began, made on such a day "in the twentieth year of our Sovereign Lady, Elizabeth, by the Grace of God," &c. Evidently taken from an actual draft was also the "will of J. G. a Citizen," with its gift of £3, 6s. 8d. to each prisoner in Newgate and Ludgate Bridewell, and a further legacy to the Citizens' Worshipful Company towards "a recreation" to be had by the liverymen at his burial. The draftsman was but a poor poet. When the citizen gave to his company a cup of silver and

<sup>1</sup> *History of English Law*, i. 198. Professor Maitland described one such collection (L.Q.R. vii. 63) which comprised documents used in mercantile affairs, as well as those required in the management of large estates. The precedents of John of Oxford, monk of Luffield Priory, were forty-three in number.



gold, of the weight of forty ounces, he directed that there should be graven on the bottom, "these two letters, 'J. G.,' and a posie written in this manner:—

'When the drink is out and the bottom you may see  
Remember your brother, J. G.'"

Was the constant prayer, "Lord, keep my memory green," ever put more artlessly? Yet a greater poet varied the epitaph but little: "turn down an empty glass!"

The editor was not above a little pleasant commendation of his wares. He entitled one precedent "a very good mortgage of a Grand Lease," and another "a very good Lease of a Brewhouse and Brewing Vessels, with very good Covenants, and a Covenant to stand to Award, if any Controversie arise between the Parties upon any matter in this Lease"; so that we learn, not only that arbitration clauses are of considerable antiquity, but that by the time of the Restoration the conveyancer had become critical of his guides. There were then, Herne said, many such books of precedent extant, which were "very good and useful." In these the pioneer was William West (fl. 1568–1594). The attorney-conveyancer should remember him with gratitude, both for his spirited defence of the profession and his services as author; and he must regard him with respectful admiration, in that he made a fortune by his practice, and retired. His prefaces are dated from Doncaster and Rotherham, where he seems to have commenced author (like Lord Macaulay in later days) by compiling an index—that to Fitzherbert's *L'Office et Authoritie de Justices de Paix*. But the work that made him known was his collection of precedents. West chose to call his book



*Symbolography*, which "is an art or cunning rightly to forme and make written instruments"; but his readers seem to have known the work simply as "West," and by that name it must have been familiar over all England from soon after its first appearance in 1590. A second edition was required in 1592; and, much enlarged from time to time, though deprived of its amusing preface, it appeared in 1610, 1618, and 1622, while the second part appeared in 1594, and was reprinted in 1611, 1622, and 1627, and again in 1632. Never a small book, by the editions of 1622-27 it made a stout quarto of 1350 closely printed pages. The second part so far extended the original plan that the two volumes may well have been almost the whole library of the attorney. Fines, recoveries, indictments, arbitrations, proceedings in the Chancery, the Star Chamber, Exchequer, the Courts of Wards: all have their proper "forms." But the main purpose of the book was conveyancing; some seven hundred precedents are indexed in the first part, beside twenty "instruments added concerning Merchants' affairs." These include a policy of life assurance which the underwriters declare, in the words of a marine insurance policy, "shall be of as much force and effect as the best and most sure policy or writing of assurance which hath been ever heretofore used to be in Lombard Street or now within the Royall Exchange in London." From Acquittances to Wills, there is an astonishing wealth of forms, sometimes in Latin, very occasionally in French, generally in English.<sup>1</sup> Except

<sup>1</sup> Mr. W. Carew Hazlitt thinks one of the wills was the precedent on which Shakespeare's testament was based (*Shakespeare: Himself and His Work*, 1903, p. 53). Mr. Rushton, the pioneer among students of Shakespeare's legal acquirements, thinks the poet may have been familiar with *Swinburn on Testaments* (*Shakespeare's Testamentary Language*, 1869).

in his introductory book, West rarely allows himself any comment; it is with the more surprise that the reader occasionally comes on such a head-note as this: "A conveyance in trust by a widow, of a lease given unto her first husband, that her second husband should not sell it away, as commonly it happeneth." But in his first book West has a Treatise on the nature and essentials of deeds, and if there was ever careless conveyancing under Queen Elizabeth, West had cleared his conscience by these scrupulous directions:—

"Then followeth the drawing of such Instruments in forme after some president ensuing, as the qualities of the fact or contract exacteth; whether it be a feoffment, grant, &c., or any other instrument.

"Then must such first draught be circumspectly examined, perused, concluded, and agreed upon by the parties or their counsell.

"When such first draught is so agreed upon, then it is to be faire written and ingrossed in paper or parchment, without blotting, rasing, enterlining, writing everie word plainly at length, without any abbreviations, ciphers, figures, or notes, which may breed any scruple or doubt.

"Then they must be warily and precisely read over, and examined twice or thrice at the least, lest any thing be inserted, detracted, omitted, altered or mistaken, differing from the parties good meaning. . . .

"All things being thus despatched, the Instruments are to be subscribed by the parties.

"And by them sealed with hard wax like to continue long.

"And when Instruments are sealed and subscribed they must be openly read and published in the hearing of divers substantiall credible witnesses and afterwards

delivered in their presence, as the acts and deeds of the parties.

“These things being so finished, the sealing and delivery of such deeds must be certified upon the back side thereof, or in some other convenient place thereof, thus, Sealed and delivered in the presence of A, B, C, D, E, F, &c., and chuse alwaies such young witnesses which can subscribe their owne names if you can get them.”

The paternity of modern conveyancing seems to be disputed. James Booth has been styled the father, but the title has been more often given to Sir Orlando Bridgeman, the inventor of the device of appointing trustees to preserve contingent remainders. Debarred by his opinions from appearing in Court during the Commonwealth, Sir Orlando betook himself to “the silent branch” of his profession, and obtained a great practice—“his very enemies not thinking their estates secure without his advice.” An obliging person even dropped into verse in honour of the future Chief Justice and his fellow cavalier-conveyancer, Sir Jeffrey Palmer, who was so rigid for the cause that he never wrote “Oliver” with a great O.

“Few Englishmen can purchase an estate  
Unless your wisdoms unsophisticate  
The title vouch. Ye can stop Hymen’s way :  
For portions, jointures, both sexes must pay  
Due thanks. Wise fathers ranters keep in awe  
Craving from ye, the oracles of Law,  
Help to entail their lands ; while yourselves be  
Tenants of riches, of renown, in fee.”

Yet one would think West had the strongest claim to the title. At least if Sir Orlando was the father, West was the grandfather of modern conveyancing.

His precedents are surprisingly like our own, especially if allowance be made for the difference in economic conditions. Deeds were already one unbroken sentence from "This Indenture" to "In Witness," without stops or dashes or italics; for who, as the old question puts it, would have his title to his estate depend upon a comma? They are arranged in the same order as our own, though West rarely uses "recitals," the narrative clauses by which the modern conveyancer preludes the operative part of his deeds.<sup>1</sup> This persistence in the form of conveyances is, indeed, remarkable; and it is to the unbroken use of time-honoured precedents that we owe one characteristic of our instruments, the use of some words in slightly archaic form, and the retention of others which have fallen into disuse elsewhere. So "this indenture" always "witnesseth," and "whereto" and "hereinafter" appear frequently. Indeed conveyances are "a well of English undefiled." The lady who buys a field is surprised at its being described as a "parcel" of land, unless, indeed, she recalls the use of the word in the Book of Ruth, or knows that city men still speak of parcels of oats, and steel, and other things not packed in brown paper. Where, save in deeds or dictionaries, does the reader now find sollars, or wydraughts, or tofts, or messuages?

<sup>1</sup> But, as might be expected, the deeds grew more complex. Some of the charters in Madox's *Formulare Anglicanum*, it has been pointed out, are quite simple. By Elizabeth's time the complication of deeds grieved Stubbes (*Anatomy of Abuses*, ii. 32), who it must be admitted, was easily shocked. "For whereas in times past, when men dealt up-rightly, and in the feare of God, sixe or seven lines was sufficient for the assurance of any piece of land whatsoever, now 40, 60, 100, 200, 500, nay a whole skin of parchment, and sometimes two or three skins, will hardly serve. Wherein shall be so many provisoes, particulars, and clauses, and so many observances, that it is hard for a poore ignorant man to keepe halfe of them." Stubbes was thinking chiefly of leases, and rebuking landlords for rack renting and insisting on heavy fines for renewals.



And some of even these, one fears, were added on 1st January 1882 to the "words which time has flung away."

Deeds have, it is true, no pretensions to literary elegance. The conveyancer, it has been said, "uses no word of ornament, and never omits for the sake of style anything he thinks necessary for clearness. So he repeats names time after time where the use of the pronoun would leave any doubt as to the antecedent intended." The art has, of course, its own rules. "There should be no superfluous word," says Sir Edward Fry, "no two words for one thing, or two things for one word; so nothing which the law implies should be expressed, and nothing which is not certainly implied should be omitted, or left to question or doubt. There should be no sentence and no word admitting of more constructions than one." It has often been made matter of complaint that some terms of the art are generally unintelligible. "I could never comprehend," said a doctor to a barrister, "what you mean by *docking an entail*." "My dear doctor," was the answer, "I don't wonder at that; it is doing what your profession never consent to—*suffering a recovery*." But a more general complaint is of the length of deeds. They are said to be verbose, prolix, tautological. The reproach has, in large part, ceased to be true; where, as in settlements, it is still well founded, the reason lies in the number of possibilities for which provision has to be made. The client thinks of the few probabilities; the conveyancer has to consider the many possible, though unlikely, contingencies, to which untimely death, or change of fortune, or the mutability of men and women may give rise. But some great conveyancers have undoubtedly been



prolix. Of James Booth it was said that "his deeds were generally calculated for estates of the largest size." Donne was uttering a common complaint when he said of the lawyer that—

"In parchment then, large as his fields, he draws  
Assurances."

This pleasing idea has been stated in a variety of ways. An acre of parchment, critics said, was wanted to transfer an acre of land; a flock of sheep was wanted to provide the parchment for a settlement. "Puzzle, a lawyer,"<sup>1</sup> hoped to see the day when the deed should be the exact measure of the land that passed by it. The noble art of tautology, he said, was the first, second, and third excellence of a lawyer, and he read the "general words" of the parcels in his deed with as much enjoyment as Ambidexter Ignoramus had done two hundred years before.

Efforts to shorten deeds were not wanting; the author of *Law Quibbles* (1736) printed an ordinary conveyance, which occupied five pages of his book, and, in one page, the same deed "reduced" by the omission of what he considered might be implied. In the early Victorian period no subject more often engaged the attention of Parliament than the technicality and complexity of the laws relating to the transfer of land, and the delay and expense involved in the transaction. An act of 1845 supplied a shortened form of lease which was not generally adopted. Another act of the same year proposed to shorten deeds by giving to short prescribed phrases the legal effect of the much fuller expressions set out in the statute. This act, unaccompanied by any pro-

<sup>1</sup> Mr. Counsellor Puzzle in Steele's *The Funeral*.

vision for a change in the method of remuneration, undoubtedly caused considerable consternation in the profession; though the reform was not without support from clear-sighted practitioners, who saw that the interest of the conveyancer was that conveyancing should be quick, easy, and not too costly. This act failed, but the abolition in the same year of the need to assign "terms to attend the inheritance" had a happier fate, and it reduced the length of deeds by nearly one-half. In 1881 Lord Cairns succeeded where Lord Brougham had failed. Since then general words of description and covenants for title have been implied. The Statute of Uses operated, it was said, only to add three words to a deed; the Conveyancing Act also added two or three words, but by so doing made it possible to omit five hundred others.

Perhaps the Conveyancing Act would have been as ineffective as the act of 1845 but for a change in the way of paying the draftsman, and the adoption of the principle of a fee fixed in proportion to the amount of money involved in the transaction, irrespective of the amount of work actually done. When the solicitor was paid one shilling for every seventy-two words he used, and counsel a guinea for every ten sheets of paper, conciseness was an expensive virtue. If caustic criticism on the methods of legal remuneration could cause a change, Joshua Williams's *Letters to John Bull* would have inaugurated a better system. Many years passed and many deeds were drawn ere an alteration was made. But it was made at length, and if it is still true, as he said, that "to understand costs requires a treatise," the criticism has least force as applied to conveyancing.

Brevity will always be a virtue overrated by clients.

The complexity of deeds is due to the variety and essential intricacy of the dealings they record. "If you are willing to give up settling," said Mr. Williams to his "Dear Bull," "and give up leasing, and go back to a rather primitive state of things, you may by machinery of registration, in somewhat less than a century's time, make the transfer of landed property wonderfully simple." John Bull is not willing; and when his deed comes to be construed is very angry if his solicitor for the sake of brevity has omitted the clause which would have saved him trouble. The *Life of a Lawyer, written by Himself*, tells how the author's first success at the bar was due to that completeness of prevision which the critics call prolixity. A busy conveyancer had passed on to him instructions for a deed required for the Lambeth Bridge Company. "I carefully studied," he says, "all the law connected with such companies, and framed the clauses accordingly. In it I provided for all possible contingencies and regulated the remotest transactions." The solicitor for the company insisted on paying the draftsman an additional fee of fifty pounds—a delicate-minded man would have "made it" guineas—and the young counsel soon had enough conveyancing to support him.

But the preparation of deeds is only a part of the conveyancer's duty. The old precepts addressed to a buyer of land suggest some of the things which in fact he has to leave to the care of his attorney:—

"Whoso wylle be ware of purchassyng.  
Consydre theese poyntes folowyng:—

1. Fyrst se that the lande be cleere,
2. And the tytle of the sellere,
3. That it stonde in no dawngeere  
Of no woman's doweere;

4. And wethir the lande be bonde or free,
5. And the leese or releese of the feoffe.
6. Se that the seller be of age,
7. And wethir it be in any morgage;
8. Looke if ther-of a tayle be fownde,
9. And wethir it stonde in any statute bownde;
10. Consydre what servyce longyth ther-to,
11. And the quyterent that there-of owte shalle goo:
12. And yf thou may in any wyse  
     Make thy chartyr on warantyse  
     To thyne heyres and assygues alle-so,  
     This shalle a wyse purchasser doo:  
     And yn tenne yere, if ye wyse bee,  
     Ye shalle a-geyne youre sylver see."<sup>1</sup>

The conveyancer's examination of his predecessor's work is clearly of as much importance as the preparation of the new deed, and it must have been more arduous when the law of real property was more technical. It was, indeed, difficult enough to depress a future Lord Chancellor. He gave himself out, he says,<sup>2</sup> as a conveyancer and equity draftsman, and soon made £300 a year from the work given by a single client, a cousin; but he found it laborious, and it always made him "rather nervous in consequence of the importance of accuracy in opinions as to title and in the forms of deeds, &c." Moreover property changed hands so frequently that conveyancers could no longer flatter themselves with the hope that their errors would be discovered only when they were in their graves. "At every fresh mortgage," he said, "your handiwork is subjected to the searching eye of some individual who considers the detection of an error as the establishing of his own reputation for sagacity." He read the famous Preston and found it heavy work; in an

<sup>1</sup> "Twelve Points for Purchasers of land to look to," *Political, Religious, and Love Poems*.—E. E. T. S., p. 24.

<sup>2</sup> *Memoir of Lord Hatherley*, by W. R. W. Stephens, i. 198.

audacious mood he asked, "What shock could the human mind sustain if fines, recoveries, &c., were cut up both root and branch?" Another critic cynically puts it that much of the old text-books may be skipped with equal profit and pleasure.

How great a part of the old learning has gone, without any fatal shock to the human intelligence, may be seen on a reference to *The Conveyancer's Guide*, a poem by John Crisp, Esquire, of Furnival's Inn (1832). The poem was well-timed, for the reformer's axe was at hand to cut the underwoods the poet sang. What student now can tell us of the strange deities he invokes?

" Oh, Ockham, Britton, Glanville, Bracton, Brooke,  
St. Germyn, West, Hale, Littleton and Coke,  
Lilly and Horsman, Duane, Booth and Fearné,  
Bridgman and Blackstone, Butler, Hargrave, Herne,  
Hill, Bell and Preston, Duval, Sugden, Cruise,  
Names now immortaliz'd, assist my muse,  
To sing of things uncommon and abstruse!"

Even the charm of rhyme will scarcely suffice to make the modern law student read of a fee limited upon a fee, or of cognizors or cognizees, and perhaps Mr. Crisp will not persuade the lover of poesy that he finds in—

" *Mortgages and trusts and uses*  
A subject fitting for the Muses";

though it would be unjust not to say that at least the notes—in prose—are often entertaining.

It must be confessed that during the period when conveyances were acquiring the reputation of prolixity, the attorney was becoming more and more responsible for them. The scriveners seem to have declined early in the eighteenth century, perhaps before. They were



doubtless confined to London and the great towns. Elsewhere the attorney, the schoolmaster, and the "petty stationer" were always in possession of the field. In London, at least, the guild made an effort to recover what was once its monopoly, and in 1760 there was a spirited litigation to prevent London solicitors from drawing deeds. It failed, for, like the Serjeants at a later date, the scriveners had left their protest too late. Thereafter the two professions merged—there had always been some "fusion"—for the attorneys doing scriveners' work, and the old scriveners letting their sons qualify as solicitors, the ancient rivalry ceased. Moreover, the taxes imposed on solicitors strengthened their position; they were able to say to Parliament that if they were forced to pay in order to practise their calling, at least their calling should be theirs alone. And in the year 1804, "in the hurry of passing a Stamp Act," it was said, a provision was passed by which conveyancing for reward was restricted to lawyers.

The attorneys' position was thus established; but the statute was not altogether to their satisfaction, for amongst the persons permitted to practise were "conveyancers" who, though not barristers, were members of one of the Inns of Court. It was perhaps thought that the Benchers would admit to the Inns only a few qualified persons. But those "highly respectable gentlemen," as a contemporary controversialist<sup>1</sup> called them, saw no reason to restrict admissions. According to the attorneys' petitions to Parliament, linen-drappers, shopkeepers, sheriffs' officers, annuity brokers, bankers' clerks, auctioneers, schoolmasters, and inferior tradesmen of every description, together with discarded writers from attorneys' offices obtained admission, took out

<sup>1</sup> *Attornies not Conveyancers*. By a Conveyancer (1820).

certificates, and were in actual practice. So Parliament was asked to interfere again. There were petitions, newspaper paragraphs, disagreements among the attorneys, a new society formed, and bills in Parliament; all the elaborate apparatus of modern legislation and the formation of the legislative mind was set in motion. The quarrel is long dead, and conveyancers, like special pleaders below the bar, are a disappearing race.

The great reforms of the Victorian era have removed most of the old complaints against the laws relating to land. Perhaps their consequence, the fixed fee, has not improved matters from the critic's standpoint. It is not unduly cynical to suggest that "contract conveyancing" is not the highest form of the art. The conveyancer was more careful when he was paid for the pains he took. But it is rarely indeed that a title fails from fault of the draftsman. Consider the countless dealings, sales, mortgages, leases, every day completed, and the rarity of the occasions when dispute arises, and it will be seen that the conveyancer is on the whole an efficient workman, a master of his tools.

The attorney, let it be confessed, is but the general practitioner; the specialist, the consultant, is not of his order. "In its purest and highest development," says Sir Edward Fry, conveyancing "is the function of a small set of learned lawyers, who are chiefly to be found in Lincoln's Inn. In these rooms they sit day by day, and receive visits from solicitors or their clerks, who bring to them the more difficult problems of the art to solve, and the more difficult of the writings to prepare, and there they pursue their learned toil, free from the noise and the wit of the Courts, and remote from the ordinary pursuits of their fellow-men. They breathe a highly rarefied and transcendental atmosphere." This

is true; the great conveyancer gains no extra-professional renown. Had John Bull ever heard, Mr. Williams asked him, of Mr. Jarman or Mr. Hayes? John had not; for good or for ill he attributed the work to his attorney. And on the whole the attorney had done the work very well; in the conveyancing room he was least criticised.

It is according to the irony of things, therefore, that it is in respect of this work that the severest blow has been dealt to the attorney. The long fight for a system of registration, which is to make simple things in their nature complex, has ended in London, at least, against the attorney. The Land Registry is open and full of officials. So the next generation of auctioneers and accountants and agents, or the next but one, may hope to manage those dealings with land which have hitherto been the function of the solicitor. Possibly they will discharge it better, but it is also possible that they will not. And it is one of the things which may happen that the officials, having extruded the lawyers from conveyancing, will do it themselves—"for their fees," as the *Mirroure of Justice* says. If so, the glory and the picturesqueness of conveyancing will have departed. They have begun by printing "forms" made to look as little like title-deeds as possible. They are not to be deeds but "instruments." "This Indenture," the time-honoured commencement of so many deeds, has been struck out; parchment is unused, and many familiar clauses are not allowed to appear on the official foolscap; if tolerated at all they must go at the back of the paper, and not show their old-fashioned faces on the front page. John Bull is apparently intended to believe he is signing a transfer of shares. So the attorneys may close their offices, and the Registrars and

Deputy Registrars, and Registry Surveyors, and Registry Mapmakers, and clerks, and officials multiply over the land.

Yet, perhaps, the generations of official conveyancers will be few. They may have come too late, and with them, too, Fate may have its sport. The reformers of fifty years ago objected to pay the cost of transfer; the land reformer of to-day, going to the root of the matter, refuses to pay the purchase money. Perhaps when the "system" is in full working order there will be no private property left to register.







JOHN DOE & CRICHTON ROE.  
Brothers in LAW.

"GENEROUS PUGNACITY"

## SIDELIGHTS ON THE ATTORNEYS

THE sneers of the superior at Macaulay do not prevent imitation of his plan. Historians are determined not to neglect the condition of the people, the social life of their period. They take it to be their duty, as Macaulay put it, "to write the history of the people as well as the government, to trace the progress of useful and ornamental arts, to describe the rise of religious sects and the changes of literary taste, to portray the manners of successive generations, and not to pass by with neglect even the revolutions which have taken place in dress, furniture, repasts, and public amusements." To discharge this duty the contemporary records must be consulted, and events are more and more recorded in the words of eye-witnesses. If the fashion holds it is to be hoped that we shall have in time a history of England written without reference to the older history books. *History without Historians* should be an entertaining volume. The compiler would go, not to the formal chronicles, the Journals of the Houses, the Gazettes, and such humdrum sources of information, but would spell out his narrative from what references he could find in the memoirs and letters of the time, the allusions of the poets and the phrases of the theatre. So we should learn of the plague from Defoe, of Marlborough's sieges from my Uncle Toby; Lord Eldon would come into the story through Shelley's verses "To the Lord Chancellor,"

and we might gather there had been a disagreement between French and English at Waterloo from the works of Lord Byron.

The same method might be applied to the law in the hope of seeing the lawyer as he seemed to those who met him, of finding how the law affected, not the historian, but the client. The search would doubtless have its disappointments; as when Mr. Pepys waited in vain to see his attorney, and so "vexed and weary" departed, and Mr. Wilkinson was lost to history. But it would reveal material in unexpected places. Who that in a happy hour reads *The Letters of Dorothy Osborne* would expect to find there any reference to the reform of the Courts? How should that most charming of love-letter writers and gentlewomen have to do with the dust of Lincoln's Inn? Yet she wrote "there is a talk as if the Chancery goes down; if so his [Lord Whitelocke's] title goes with it, I think. 'Twill be sad news for my Lord Keble's son; he will have nothing left to say when 'my Lord, my father' is taken from him." The Chancery did not go down, but it came very near it, for four bills were in turn brought before the House to that end; and one would sooner learn the fact from Mistress Osborne than from Mr. Parkes's *History of the Court of Chancery*.

In the eighteenth century another Osborn was writing from Chicksands, who had greater experience of the Court; for after her husband's early death she found that he had "debts of all kinds out against him, executions, and all sorts of bonds and ingagements."<sup>1</sup>

<sup>1</sup> *Political and Social Letters of a Lady of the Eighteenth Century*, 1721-1771. The Hon. Mrs. Osborn was grand-niece by marriage of the more famous letter-writer. In 1740 she was making some renovation of the private chapel, and wrote, "I brought up the old pulpit cushion to be fitted to the size and coverd, and when I took off the old rotten cover

Though soon weary of the delays of the Court she seems to have mastered all business details. Her brother Robin was directed to find Mr. Theed, her solicitor. "The case is this that I have had answers to my Chancery bills, but they proving roguish ones, and not to the purpose, I am obliged to file a bill of exceptions to them, and oblige them to answer more fully." The lady herself chose her counsel, and hurried the solicitors as well as she could, but found her brother's aid necessary. When the lawyers saw a man appear they would not delay so, she said, perhaps exaggerating masculine influence, but a poor woman was made nothing of; she might live upon air seven years if she could. She had but a poor opinion of lawyers. "They are all Rogues," she wrote, "but I cannot but say Theed has dealt as honestly by me as any one of them and has shuffled less." Perhaps an attorney could not expect anything better than this from a lady of quality. But she dealt a shrewder blow at the rogues. Her "brother Byng," she said—she was a sister of the unfortunate admiral—seemed "varstly nettled with Daniel," who was a member of the profession; "I think he will act the lawyer and not the gentleman."<sup>1</sup>

"Of law," runs a familiar quotation from that

there was wrote upon the dimoty 'Dorothy Osborn the year 1605, B.D.' Therefore I preserved that end and cut the other since it had been 135 years in your chape." The cushion was doubtless the work of the letter-writer's mother, or grandmother, who were both Dorothies. The Hon. Mrs. Osborn herself wielded a pointed pen: witness her summary of politics, "the outs pout, the ins grin."

<sup>1</sup> Perhaps this contemptuous expression was proverbial. At least Horace Walpole used the same phrase. "I bade Lucas write . . . . I was ready to settle the affair, provided I were allowed to act handsomely and like a gentleman, and not like a lawyer" (*Letters*, xii. 8). Brother Byng, we learn from another source, had all his lifetime endeavoured to keep himself out of Westminster Hall, and "long and tedious Chancery suits."

learned, judicious divine, Mr. Richard Hooker, "there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power: both Angels and men and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy." This noble eulogy has never been extended from the law to its ministers. Concerning them the greatest and the least are uniform in opinion, but in a different sense; peace and joy are the last things to be attributed to the lawyers, who are consigned to a very different seat. The law, if popular judgment be correct, is like the horse, which we know on authority to be a noble animal, but only indifferently successful in implanting its qualities in those who have with it any business associations.

No doubt it is possible to speak of the law itself in lower terms. The thing has, indeed, been done. Regarded not as the prevailing and universal science of human conduct, but as the rules and spirit of combat between man and man, a less pleasing picture is presented. So Ariosto (if one inexperienced may quote in translations) depicts Discord with law as her instrument:—

"Examinations, summons, and a store  
Of writs and letters of attorney, she  
And hearings in her hands and bosom bore  
And consultations, and authority:  
Weapons from which the substance of the poor  
Can never safe in walled city be.  
Before, behind her, and about her, wait  
Attorney, notary and advocate."



Here, at once, we have a suggestion of the complaints which are repeated through English history; lawyers are too many, quarrels are fostered and multiplied, suits are too long, the procedure is too complex, and, above all, too costly. Proverbs are true guides to the popular view: "law is a bottomless pit," "when women go to law the devil is full of business," "a good lawyer an evil neighbour," "no fee, no law." All the voices are on the same side. Divines, philosophers, politicians, looking out upon the world, perceive the same grave ailments in the commonwealth. The clergy, especially, show a severity surprising when one considers their share of responsibility for our legal system. Since they were, with difficulty, excluded from the secular courts, matters there have never been to their liking. One may take for example, John Wesley's criticisms. He saw a Chancery bill and thought it a foul monster. "A scroll it was," he said, "of forty-two pages, in large folio, to tell a story which needed not to have taken up forty-two lines, and stuffed with such stupid, senseless, improbable lies (many of them, too, quite foreign to the question), as I believe would have cost the compiler his life in any heathen court of either Greece or Rome. And this is equity in a Christian country." The Chancery is, of course, always a mark for the critics, and has a reputation which it will require two generations of its present prompt efficiency to live down. But the common law seemed to Wesley no better. Fourteen years later the great preacher saw a declaration against a smuggler who had landed spirits in Yorkshire. This document took up "thirteen or fourteen sheets of treble stamped paper," and Wesley was moved to even greater indignation than by the Chancery bill. "O England!

England!" he cried, "will this reproach never be rolled away from thee? Is there anything like this to be found, either among Papists, Turks, or heathens? In the name of truth, justice, mercy, and common-sense, I ask. 1. Why do men lie for lying's sake? Is it only to keep their hands in? . . . 4. Where is the mercy of thus grinding the face of the poor? thus sucking the blood of a poor beggared prisoner?" Later still he saw the indictment against Lord George Gordon. "I stood aghast," he wrote. "What a shocking insult upon truth and common-sense! But it is the usual form. The more is the shame." One may suppose that Wesley found the indictment, like the declaration and the Chancery bill, too long. So mere laymen have sometimes found sermons tedious. No one can deny the truth of Wesley's impeachment; the lawyers have confessed the charge, and, it is to be hoped, avoided it, by amendments of the law. Indeed they have shown themselves more amenable to correction than their critics, whose discourses are still thought to show an insufficient "leaning to the side of mercy."

The Quakers carried their dislike so far that the stricter among them refused to employ attorneys at all. One is glad to know that this was upon a general principle, and not from any special aversion. Harried from court to court and browbeaten, they had little cause to love the law. The language of Bunyan's judge in *Vanity Fair* was too familiar to them: "Thou runagate, heretic, and traitor . . . thou deservest to live no longer, but to be slain immediately on the place; yet that all men may see our gentleness towards thee, let us hear what thou hast to say." Yet one is forced to think that the special interposition of Pro-

vidence which saved George Fox from conviction took the form of a lawyer. His journal runs: "While the judges, justices, and sheriff were contriving together how they might put me to death, the Lord disappointed their designs by an unexpected way. For the judge's clerk, as I was informed, started a question among them which confounded all their counsels; after which they had not power to call me before the judge."

Even more marked was the thrice-repeated failure to convict him for his undoubted refusal to take the oath of allegiance. The clerk of the peace forgot to allege in the indictment that Fox was a subject of the King, gave the wrong day of the month for the sessions, made a mistake in the year of the King's reign, although it was correctly stated in a fellow-prisoner's indictment, and omitted part of the form of the oath. All these things occurred though the judge had bidden the clerk take great care to avoid further mistakes, and the justices naturally thought some one had done this on purpose. Fox knew better. "Before I came to the bar," he wrote, "I was moved in my spirit to pray that God would confound their wickedness and set His truth over all. The Lord heard and answered, and did confound them in their proceedings against me. And though they had most envy against me, yet most gross errors were found in my indictment." But human agency being admittedly necessary in such proceedings, one would have liked to know who it was that helped Fox by these palpable errors, and to have the name of this Nicodemus among the attorneys.

It has been said that the clergy were largely responsible for the English legal system; it might be added that from them the laity caught the litigious spirit.

"No one," says Mr. Hall,<sup>1</sup> "can read the old monkish chronicles without amazement at the almost ceaseless litigation in which the religious bodies were engaged, sometimes laying an avaricious hand on their neighbours' land and wealth, at others defending their own privileges against the encroachment of the military noble, or proving their title to them, occasionally even by forgery, before the King's Justices; or, again, disputing and claiming rights over bridges and ferries, rights of holding markets and fairs, of tythes, of asylum for criminals, and the presentation to ecclesiastical benefices; out of all this grew much of our present legal system, an extensive catalogue of charters and other legal instruments, and the courts of law; lastly, also the gradual development of a legal profession."

The origin of the bar, it is suggested, is to be found in the ancient compurgators, generally members of the same Frith Guild as the accused, of whom the senior would address the Court on his behalf, and the parish priest would naturally be found as advocate for a parishioner. The other branch had its origin in the natural needs of men called away by military duties and unable to appear in the sheriff's court. The earliest attorneys were, of course, not professional agents. A monk appeared for his abbey, a steward or bailiff for his lord. But by Edward I.'s reign the lawyer's position had become more defined and important, and the profession of attorney, or legal agent, was growing up. Indeed it appears that by 1280 disorders had arisen in the city courts, through impostors appearing there, and every one making himself a counter or pleader at will, so that "the substantial

<sup>1</sup> "The Rise of the English Legal Profession," by J. W. Hall. *Transactions of the Royal Historical Society*, iii. 98.



men of the city well perceived that through their ignorance the impleaded and impleaders lost their pleas and their suits in the Hustings." On the other hand, Mr. Hall, searching the *Placita de Quo Warranto*, finds it possible to ascertain who among the attorneys of six centuries ago were of greatest repute and eminence in their profession. In the reign of Edward I. Robert de Makeworth and John de Sherwood seem to have been in great request during the circuit of the King's Commission in the county of Devon, but even these names are thrown into the shade by the apparent repute of Thomas de Tockswyk, John de Bledlow, and William Gault, who appear as attorneys over and over again on behalf of most important interests. Thomas de Toekeswith—for so the name was sometimes written—is entered as the attorney for "Sarra qui fuit uxor H. Spigornal," who was probably the pleader, afterwards judge of the Common Pleas.

Here, then, the attorneys are fairly started on their career, with the germ of a Law Society in the eminent practitioners whose names were thus immortalised. It has to be admitted that already complaints were heard against all branches of the profession, and Galfredus Page has the unenviable distinction of being the first attorney against whom a grievance stands recorded. Galfredus being duly appointed attorney for Radulphus de Planaz (as early as 38 Hen. III.), improperly withdrew from the court or case, and allowed the adversaries to obtain judgment. Another instance of complaint is recorded in 1365, when the Dean of Wells promised the chapter "to speak with their attorney in the King's Court," and "to provide another if he is not more diligent."<sup>1</sup>

<sup>1</sup> *Third Report of the Historical MSS. Commission*, p. 268.



One may be sure that before printing came to preserve popular judgment upon lawyers, a public opinion had already grown up; proverbs, the sayings heard at fair and market and pointed into epigram by constant use, the embittered reminiscences of losing litigants, all helped to form as well as to record opinion. The regulations of the early guilds enjoined arbitration; no money of the guild was to be wasted in lawsuits or such like.<sup>1</sup> Already the husbandman included lawyers among the many burdens he must bear.<sup>2</sup> He had to pay his rent and tithes, taxes to the king, wages to servants, fees to clerk and sexton, bailiffs and beadles, gifts to monks of the four orders and some others, minstrels and beggars, to greenwax and the summoners, who else would say he had left unproved some testament; and, lastly, his man of law in London must have money every quarter. This is clearly a voluntary addition to a long list of involuntary payments. But it was complained that lawyers would not plead for poor men.<sup>3</sup> Law was too lordly, and loth to make an end of things without presents or pence.<sup>4</sup> The lawyers criticised were, of course, barristers, so that it was the bar which earned that reputation for rapacity, which by a strange perversion has become attached to the lower branch.

But the convenience, indeed the essential necessity, of having some agent to act for the litigant in legal matters is seen in the rules of the local Courts, recorded in the various borough customals. Leicester, Exeter, and Ipswich, *e.g.* all declared, towards the end

<sup>1</sup> *English Guilds*, p. 27.

<sup>2</sup> "God Speede the Plough," in *Pierce the Ploughman's Crede*. Early English Text Society, 1867, p. 36.

<sup>3</sup> *Vision of William concerning Piers Plowman*, viii. 45.

<sup>4</sup> *Ibid.*, p. 36.

of the thirteenth century, for liberty for litigants to appoint attorneys privately and not only, as theretofore, by declaration in open court. Romney, indeed, in 1489 appears to have reverted to the earlier practice. Perhaps some corruptions or inconveniences had been discovered. In London, it seems, the attorneys had to be forbidden to make a noise, to bring false actions, to take their seats among the clerks of the court. Perhaps the attorneys in the borough courts, appointed or admitted by the aldermen and practising only locally, were not lawyers. One may conjecture this from a regulation made at Lincoln in 1480. If an attorney, it ran, appeared for a defendant of his own free will, and the defendant were condemned in debt and did not pay, execution might issue against the goods, or even the person, of the attorney! Such a rule applied to professional attorneys would have brought their race to premature extinction. A Waterford custom, of about 1300, confirms the view. The catchpole of the town, it declared, was not to act as attorney for a foreigner<sup>1</sup> without leave of the mayor and bailiffs on penalty of losing his mace; the catchpole, one may assume, was not an attorney by profession. Indeed, as long after as 1672, the Chief Justice informed the House of Lords that men practised in the Courts Baron who were not really attorneys.

The Middle Ages were a golden time for lawyers. A very early example is found in *The Paston Letters*:<sup>2</sup> "Geoffrey Somerton was both a pardoner and an attorney, and then was a good world, for he gathered

<sup>1</sup> The foreigner, *i.e.* the non-townsmen, was not a favourite. Worcester prohibited any foreigner being sworn as an attorney.

<sup>2</sup> i. 27, 28.

many pence and halfpence and therewith he made a fair chapel at Somerton." Already the good world is spoken of in the past tense. But they were also a time when advocate and attorney were undoubtedly exposed to special difficulties. The modern practitioner is mainly concerned with the merits of his clients' cause. But his predecessors had in those days many other things to consider. The sheriff and jury must be favourably inclined if success were to be possible; bribes were common, outlaws were put upon juries to ensure a verdict; the parties sometimes suppressed the official panel, and substituted one of their own making; false allegations of villeinage might have to be disproved; fraudulent feoffments might make it difficult to know against whom the remedy was to be sought; forgery, the "wicked, pernicious and dangerous practice of making, forging, and publishing false and untrue charters, evidences, and writings," Parliament declared in 1563, had then of late been very much more practised, used, and put in use in all parts of the realm than in times past. Witnesses were to be found, "substantial, fearless souls that will swear suddenly, that will swear anything." With so many weapons to meet—or to wield—the practice of the law must have been a difficult matter. The cause's potency was more than the cause's equity, men said. The law was ended as a man was friended. Moreover, the Englishman, now so reasonable and ready to compromise, had not then lost the fierce litigious spirit which had been brought over from Normandy. Douglas Jerrold lamented that in our days "the sneaking spirit of the time has so enervated the British character that Englishmen lack somewhat of that generous pugnacity which in the days of our

fathers would precipitate them into the arena of the law to feed with their own flesh the lions therein prowling." In those good days the Englishman would, like Bartolus in *The Spanish Curate*, "serve process presently and strongly." If in all the consequent rattle of litigation men were deafened, it is easy to see that the lawyers would be blamed. Hence the constant effort of Parliament to limit their number, and to ensure that only men of character should be allowed to practise. But the earlier critics remembered, what later ones sometimes do not, that a lawsuit requires a plaintiff and defendant as well as lawyers, and that the most litigious attorney cannot bring an action without parties willing to sue. The evil passions of mankind and the defects of the law shared the reprobation afterwards concentrated on the practitioners. If one proverb declared that lawyers' houses are built on the heads of fools, another reminded men that their gowns are lined with the wilfulness of clients. Sir Thomas More deplored the lawsuits which "every day broke out and were eternally depending." Thomas Stapleton (1535-1598), admiring the zeal of that Chancellor, who had despatched all the causes in Chancery ready for hearing, was moved to remark how much worse were his own later days. "Every man lives almost a salamander," he said, "in the fire of contention; witness the multiplicity of lawsuits, the shoals of clerks and registrars that are to be found in the midst of us; witness the crowd of clients dancing attendance upon the courts of justice in the several judicatures at Westminster and elsewhere." The arbitrator's text, "what the apostle said to the Corinthians, 'Is there not a wise man among you, why do you go to law?'



1 Cor. vi. 7," he declared might well be inverted upon them; they were all mad, or else the lawyers would have less employment. Starkey<sup>1</sup> thought the laws good, though too many and confused, but the law's servants were covetous and greedy.

The length of suits grieved the critics of the sixteenth century as much as their number. Starkey said some were pending three or four years which might be finished in fewer days. Longing eyes were cast at the management of things by the reformed churches beyond the seas, where no suit was allowed to last more than one or two, or at most three days. Preachers searched the Scriptures for parallels to their long endurance in England. One remarked that "as Joshua said of the building of Jericho, 'He shall lay the foundation thereof in his firstborn, in his youngest shall he set up the gates thereof,' so there may be a suit at law commenced in the birth of our firstborn, and yet our youngest son shall not see the gates thereof, that is the end of it." Another preacher lamented that causes became grey-headed in the Courts, and forced the "poor client to say unto his lawyer, as Balaam's ass did to his master, 'Am I not thine ass, which thou hast ridden since thy first time till this present day?'"

The modern reader of these ancient reprehensions must ask himself why it is that lawyers have this constant reputation for delay. They have every reason for despatch. They wish to please their clients, who are all for promptitude. Their own interest is to reach the final stage of litigation, the trial of the cause; for it is then that they are paid for their work. Delay tells against them every way, in profit and reputation.

<sup>1</sup> *Life and Letters*. Early English Text Society (1878).



In Chancery matters, where, from the nature of its causes, delay is most apt to occur, it is said that interest on the lawyers' outlay would (if it were paid, which is not the case) equal their profits. True, according to our system of remuneration, the more interlocutory applications there are, the more the bill. But the increase is so slight that even the most dishonest must hesitate before he yields to the temptation to bring an unnecessary summons before the court. If matters proceed slowly nowadays it is in spite, not because, of the lawyer.

One suspects that the early lawyer was paid as he went, and took no step without his fee in hand. Moreover, there was no taxing-master then, the practitioner fixed his own price, and the client may have required time to find it. The modern lawyer is rarely so exacting. Yet the law's delay is held as great. The law, indeed, is more guilty than the lawyer. Many things contribute to the loss of time, always and especially the insufficient number of judges. Then the absence or illness of witnesses, difficulty in procuring evidence, and a hundred accidents may cause the postponement of the trial. Doubtless the busy lawyer sometimes puts the least pressing business aside; it is not claimed that he is different from other men. But most lawyers are not over-busy, and, while every motive pushes them forward, the universal judgment is that they delay. "Lawyers," said Horace Walpole, "have so combined the ideas of gaining time and gaining money that they certainly think delay is positive wealth." All the critics agree, the law's delay has become a proverb; it is scarcely permissible to doubt the fact. But it remains one of the strangest puzzles of "this sorry scheme of things."

As the Middle Ages fade into the light of common day, in Elizabethan and Jacobean times we get deliberate portraits of lawyers, drawn by professed limners of the world's hard features. The "character" writers could not overlook figures so conspicuous in the life of the time; and if the maker of epigrams insisted for the sake of pungency on the lawyer's misdeeds, if for effect he sharpened his blackest pencil, yet, when all allowances are made, one may be sure that his model was not a popular person. The whole world of the law is depicted here, from "the reverend judge" to the professional witness who swore for hire. The reverend judge, it seems, strove rather to purchase a good name than land, forbade extortion by his followers, and made the laws serve as a protection for the innocent rather than as traps for the unwary. Perhaps all judges were not "reverend"; possibly the praise of one was meant as an admonition to others. Wye Saltonstall describes the term for us, the busy time of the town, which made that quick which before was dead. Then "Justice keeps open court for all comers, while her sister Equity strives to mitigate the rigour of her positive sentence." Then the innkeepers, who have been gasping for it like shellfish for salt water at an ebb tide, revive and repaint their signs; then the watermen find fares for Westminster; then new plays are produced, new books come out, and Paul's Walk sees fresh company. The term is the joy of the city and a dear friend to countrymen. Bishop Earle saw this litigant, this "plain country fellow," hobbling after a lawyer in Westminster Hall, cleaving to the ground with hard scraping of his hob-nailed boots in beseeching his worship to take his money. Barnaby Rich observed that the lawyer sent his client home four times a year (at the end of

each term) with an empty purse. The Franklin, whom Overbury much admired, the ancient yeoman of England, not ashamed to work and working on his own land, "lord paramount of himself," on the other hand, never went to law. He knew that none thrived by it, and that they who went slept as uneasily as if on a pillow stuffed with lawyers' penknives. The other figures to be seen in this gallery include the prisoner for debt or bankrupt—a bond-slave to the law, said Sir Thomas Overbury, the prize of creditors and jailors, from whom the lawyers flay off the skin and lap him in parchment: "he is a very good picking of meat for a lawyer." The creditor, from the beginning of Hilary term to the end of Michaelmas, is running up Fleet Street to the Chancery, thence to Westminster, then to his attorney, then to his counsellor. But *he* sought the Courts for ulterior purposes; he wanted his money. The real sportsman of the law, the litigious man, sought it for the enjoyment of litigation. He was like the French nobleman mentioned by Montaigne, who, when the monarch offered to relieve him of his troublesome lawsuits, begged that some thirty or forty causes might be left him, for amusement. The litigious man went to law, said the author of *Hudibras*, to satisfy his concupiscence of wrangling. The rules of the game delighted him; a well-drawn bill or answer was an irresistible attraction. He preferred "a cry of lawyers at the Bar before any pack of the best-mouthed dogs in all the North." So he was a constant customer of the old reverend gentlewoman, the law; once a term he had a trial of skill with some other professor of the noble science of contention. He fought with bags of money as they of old did with sandbags, and he who had the heavier bag knocked down his

opponent. He loved especially an action on the case, and preferred to be plaintiff, who is the "eldest hand" and friend of the Court. So if sued he put in a cross bill; and, plaintiff or defendant, he had as many Knights of the Post to swear for him as the King had Poor Knights to pray for him.

These Knights of the Post, these retailers of oaths, these deposition-mongers, Butler said, lived by the labour of their consciences and the peril of their ears; they laid one hand on the Book, the other was in the litigant's pocket. The lawyers had faults; the mere Inns of Court man was overdressed and ignorant, the mere Common Lawyer was pedantic, talked in a professional jargon, and thought the way to Heaven lay through Westminster Hall. Butler found the lawyer a retailer of justice who used false lights, false weights, and false measures; one that would rather pettifog and turn common barretor than lack employment. His bills were more extravagant than a tailor's; he was a mercenary, a bravo to be hired by either side; he never ended a suit, but pruned it to make it grow faster; the best lawyers were made of the worst men. Apostrophising the race he cried, in a final commination—

"Great critics in a *noverint universi*  
Know all men by those presents how to curse ye."

Bishop Earle's description of an attorney has been often quoted, and was no more kindly than Butler's. Two clerks and a quire of paper set him up—a sneer afterwards pointed at the scrivener; he knew nothing; all his skill was in his office window. Only a usurer, said Overbury, made a worse neighbour. Nicholas Breton found ignorance the worst offence in his "un-



worthy lawyer," who was evidently an attorney, for he trudged from one counsel's chambers to another's. Overbury was still more severe upon "the mere pettifogger," who was "one of Samson's foxes," set men by the ears, made them quarrel with the vicar, and in the long vacation "went a fishing with the penal statutes." His pen was his plough, parchment the soil whence he reaped corn and curses; he was content to be beaten that he might sue for damages. His fingers itched for a bribe since his first practising of court-hand, and with that final fling, said the author, "I will pitch him over the bar and leave him."

But there were judgments not unfavourable. There were worthy lawyers to be found. Such a one was a maker of peace, Breton said, among spirits of contention, and a continuer of quiet in the execution of the law, his client's hope in his case's pleading, and his heart's comfort in a happy issue. John Stephens saw the honest lawyer as a precious diamond set in pure gold. Overbury, too, thought many of the same coat to be honoured, wearing discretion, virtue, and "other good learning" as distinguishing ornaments. Of the same nature is the worthy described in the "Character of an Honest Lawyer," whom the author declared to be a trusty Pilot, a true priest of Justice, one who wore a conscience as well as a gown, weighed the cause as well as the gold, and knew but never used "the nice Snapperadoes of Practice." It was no more than his due that when Death called him to the Bar of Heaven, he should nonsuit the devil, obtain a liberate from all his infirmities, and continue still one of the Long Robe in Glory. Perhaps it was unfortunate that to praise him it was necessary to reflect on other practitioners—"jilting pettifoggers and purse-milking law drivers"



—who had not had his liberal and ingenious education, and drew their knowledge not from the springs but from the lower waters—abridgments, in fact. But the honest lawyer, at least, did not study delay for the lucre of ten groats, or disturb neighbours, or make land “fall five years’ purchase” because it lay near him, nor bring endless suits for trifles; and his tongue was “as volatile for a penniless pauper as when oiled with the *aurum potabile* of a dozen guineas.”

Yet it seems that the abuses of the law were among the least of England’s troubles then. Philip Stubbes, looking with a sad eye over the kingdom, found abuses everywhere.<sup>1</sup> England was the wickedest of countries, full of pride and naughtinesses. Dress was extravagant and absurd, gluttony, drunkenness, and unchastity were universal, the dancing was pestiferous, music allured to vanity, usury was permitted, men swore and broke the Sabbath (even holding Courts Leet on that day), and unlawful sports were widespread, including the bloody and murdering practice of football. Landlords racked their tenants, tradesmen cheated, parsons read their sermons. As for lawyers, their chief fault, it seems, was prosperity. “The lawyers go ruffling in their silks, velvets, and chains of gold: they build gorgeous houses, sumptuous edifices, and stately turrets: they keep a port like mighty potentates: they have bands and retinues of men attendant upon them daily: they purchase castles and towers, Lands and Lordships, and what not? And all upon polling and pilling of the poor commons.” So long as money, “red ointment to grease them in the fist,” was forthcoming lawyers would promise assistance, but, that failing, “farewell

<sup>1</sup> *Anatomy of Abuses* (1583), p. 117. Early English Text Society.

client, he may go shoe the goose for any good success he is like to have of his matter." If complaint were made that the lawyer had not advised at first that the client had no case, the lawyer was full of excuses. The client had not told him all, he had concealed the facts which tended against him, this and that evidence had not been produced. The excuses seem not unreasonable, but Stubbes thought otherwise. Then lawyers did not really quarrel with one another, though they seemed to do so in advocacy to draw clients on; the Lord would reward such cunning deceivers. Stubbes complained, as did Harrison, that men would go three or four hundred miles to get justice, rather than sue near home. He admitted frankly the litigious character of his countrymen. "They are very contentious indeed. Inasmuch as if one give never so small an occasion to another, suit must straight be commenced; and to law go they, as round as a ball, till either both, or at least the one, become a beggar all the days of his life after." Another critic put it more pointedly. They would commence suits if a neighbour's goose but happened to look over a hedge. Yet Stubbes would not admit that, as the Anabaptists and other heretics held, it was unlawful for the Christian man to go to law. Hence lawyers were most necessary for the execution of the laws. In his judgment, in no calling could a man serve God better, if he were a man of conscience. Unfortunately, lawyers in England were not like that. They had such cheverel consciences, and they handled poor men's causes so coldly, they demanded fees such as sucked the marrow from men's bones—not speaking two words for less than an angel—that law was turned topsyturvy, and happy was he that had least to do with

them.<sup>1</sup> With such "large consciences," lawyers grew rich, indeed, to the world, but towards Heaven they were poor enough. Almost one might suspect that some suit of Mr. Stubbes's had not prospered.

Another survey of the world, made thirty years later, had no more pleasing results. Barnaby Rich<sup>2</sup> found lawsuits too many, and lawyers. But at least the lawyers did not prosper. Some made good shift to send their clients home penniless, but others at the end of the term found that their gettings had been less than their expenses. *They* said this was because men were grown too wise to go to law, but Mr. Rich saw little sign of such wisdom. His explanation was that there were, not too few suits, but too many lawyers, "especially, of these aturnies, solicitors, and such other petty *Foggers*." Members of the bar should be of the better sorts of gentlemen, but the Inns of Court were stuffed with the sons of farmers "and with all other sorts of tradesmen." These unworthy persons stirred up quarrels (for once the attorney was not the person blamed for this), and delayed causes. If the lawyer's tongue was not well tipped with gold you should not hear a comfortable word come out of his mouth in a whole Michaelmas term. His lips must be unlocked with a golden key. Then perhaps he would speak, said Mr. Rich, adding bitterly, "to as good a purpose as if he had still been mute." "They say it is an argument of a licentious commonweath where Physicians and Lawyers have too great comings in."

<sup>1</sup> The admonition in Seager's *School of Virtue* (1557) ran—

"Ye men of lawe, in no wyse delaie  
The cause of the poore, but help what ye maie."  
—*The Babee's Book*.

<sup>2</sup> *The Honesty of this Age* (1614). Percy Society's Publications, vol. xi.

A more genial moralist, William de Britaine,<sup>1</sup> had an even greater dislike of contention. Beware, he said, of able lawyers with little business. There were many excellent persons who were lawyers; if it was his readers' fate to have to do with law, he hoped they might have the good fortune to meet with such. Yet he could wish the example of Venice might be followed, where there were twenty-four advocates appointed and paid by the Grand Council, and forbidden to take presents from clients. So the profession might not be lowered, and in all cases it was the lawyers' interest to come to a prompt decision. Instead of this we had, in every market-place in the country, some fairies, elves, or little spirits with hawking bags or snapsacks by their sides, wherein were familiars, which were let loose to the disquiet of good men and the disturbance of the world. There were multitudes of advocates, proctors, and solicitors who were like a Quartan ague: they would never leave you till they had wrung you dry. De Britaine's advice to the reader was to study the law of the nation, not with a view to practise it, but to defend himself and his estate from the Robbin-good-Fellows of it.

Yet it has been recognised that the complaints against the law come not only from its practitioners' misdeeds, but from some innate perverseness in litigation, which seems independent of human agents. Once in it, we cannot go on and we cannot stop. "A lawsuit," said Owen Felltham, "is like a building; we cast up the charge in gross, and under-reckon it; but being in for it, we are trained along through several items, till we can neither bear the account, nor leave off,

<sup>1</sup> *Humane Prudence* (1680), reprinted as *The Counsels of William de Britaine* (1897).

though we have a mind to it. The anxiety, the trouble, the attendance, the hazard, the checks, the vexatious delays, the surreptitious advantages against us, the defeats of hope, the falseness of pretending friends, the interests of parties, the negligence of agents, and the designs of ruin upon us, do put us upon a combat against all that can plague poor man; or else we must lie down, be trodden upon, be kicked and die." So we set ourselves to abuse the law.

Thus James Howell, who had many friends in Gray's Inn, and thought its walks the pleasantest part of London, had but a poor opinion of the art practised there. "Law is not only a pickpurse," he wrote, "but a Purgatory. You know the saying they have in France, . . . The poor Clients are the Birds, Westminster Hall the Field, the Judge the Net, the Lawyers the Rats, the Attorneys the Mice of the Commonwealth. I believe," he added reluctantly, "this Saying was spoke by an angry Client . . .

'Pauvre plaideur,  
J'ay grand pitié de ta douleur.'

Spenser had been of the same mind as to clients, "so pitiful a thing is suitors' state"; and no one could have more strongly stated the woes of the litigant:—

"Full little knowest thou, that hast not tried  
What hell it is in suing long to bide:  
To lose good days, that might be better spent;  
To waste long nights in pensive discontent;  
To speed to-day, to be put back to-morrow;  
To feed on hope, to pine with fear and sorrow;  
To have thy Prince's grace, yet want her Peers;  
To have thy asking, yet wait many years;  
To fret thy soul with crosses and with cares;  
To eat thy heart through comfortless despairs."



Thus the poet; in prosaic and business-like fashion, the burgesses of High Wycombe, about 1627, set to work to remedy one of the evils they found existing in the Court of the Mayor and Aldermen of their town. "William Child, of Chesham, an attorney in the Court of the Mayor and Aldermen, for several misdemeanors . . . slovenly language, malapert carriage, and fanatic-like deportment, was declared to be no longer an attorney of that Court."<sup>1</sup> Thus enters William Child, of Chesham, and thus departs from the light of history. Hapless wight! dismissed like a dishonest varlet because some Buckinghamshire Master Shallow thought him "malapert." The attorneys of local Courts, servants of many masters, must often have had hard measure dealt out to them.

The lawyer viewed by such critics is a not unfamiliar figure; a picture painted from within the profession is more rare. It is lamentable that Richard Smyth, or Smith (1590-1675), who did the world service by recording the death of so many of his contemporaries, wrote nothing of their lives. Of Smyth himself, an interesting figure, some record fortunately remains. He was the son of a clergyman and was for a time at Oxford; thence "he was taken away by his parents, and put a clerk to an attorney belonging to the city of London"—so that the university-trained attorney was not unknown in the times of James I.; "but, his mind hanging after learning, he spent all the time he could obtain from his employment in books." In spite of bookishness, he prospered well enough to secure in 1644, doubtless by purchase, the office of Secondary of the Poultry Compter. The two Secondaries discharged in London the duties of under-sheriff; but

<sup>1</sup> *Fifth Report of the Historical MSS. Commission*, p. 391.

the position, we are told, was "nearly analogous to the station of masters and prothonotaries in the courts of law." This post he held till 1655, when his son, to whom like a good father he intended to resign his office, having died, he sold his place and "betook himself wholly to a private life, two-thirds of which at least he spent in his library." For, in or out of office, he was a book-lover and book-hunter, daily haunting the shops in Little Britain and Duck Lane, where booksellers then congregated. Among the deaths he noted were many of persons in the trade.<sup>1</sup> But he was not a mere collector, though he gathered a "vast number" of books and pamphlets, of "choiceness and rarity," but was a "constant peruser" of them, and himself wrote a good deal. Of his manuscripts the Obituary, "being a catalogue of all such persons as he knew in their life" from 1627 to 1674, the year before his own death, has been published by the Camden Society.

Smyth had a distinguished company of acquaintances, for he names among those he had known Milton, Wither, Broome, and Quarles, bishops and numerous clergymen, several judges, and a host of city dignitaries. Had he but given a few lines of biography later generations would have been trebly grateful to him, though in the leisure of his later years he made his entries a little more full. He had an eye for the curious, noting the death in 1640 of old Mr. Grice, in Aldersgate Street, who wore trunk breeches; and he was not insensible to the "good creatures" of the world, for he records of Mr. Thomas Houff of Bucklersbury that he "sold the nappy ale" and of Mr. Fletcher

<sup>1</sup> Very occasionally he adds a note: *e.g.*: "1659, May 5. Bernard Pollard, bookseller, chiefly for romances and pamphlets in English, died." It is sad that he had often to remark that the booksellers died poor.

of Jamaica House, behind Shoreditch, once a comfit-maker in Wood Street, that he was "the best chiscale maker." The occupations he mentions seem strange to us: oatmeal man, pewterer, "organist and alehouse keeper." His comments, if brief, are pregnant. Twice he adds to his obituary entry the words "a good woman"; an acquaintance he styles "my honest old taylor in Cony Hoop Lane," another "a good servant but a bad husband." Amongst his chippings from the tombstones we find such records as "old Mr. Lewis, the mercenary preacher," "a discreet juryman and Barba longa," "Mr. Hugh Audley of the Courts of Wards, infinitely rich." Of several of the wealthy men he adds "who had fined for alderman," *i.e.* presumably, paid a fine for refusing to act, so that municipal honours may have been not much sought for. A strange medley of men meet in these pages:—

"Dec. 22. Roger Snelson, dier, died.

„ 23. Mr. Preston, mercer in Cheapside, died.

Jan. 30. King Charles, beheaded at Westminster by his traiterous subjects.

Februar. 1. Sir Geo. Clark, alderman, died.

„ 5. Mr. Clem. Mosse, Under Chamberlain, died."

Something of the history of the time may be gleaned from the obituary. There are records of executions "for loyalty," and of time's revenges when the King's judges, too, are brought to the scaffold. The plague year, of course, contains an unusually long list of entries, to which are added the fateful words *ex peste*; indeed Smyth thinks it necessary to distinguish by saying that one recorded death was *not* of the sickness.<sup>1</sup>

<sup>1</sup> There are several deaths attributed to the plague many years earlier.

The great fire itself is not directly mentioned ; but it is seen obliquely in records of burials which took place in the ruins of the city churches, while another sad entry runs " Mr. Kniveton, clockmaker, once in Lothbury, *since the fire in Bedlam.*"

Probably it does some injustice to Smyth that the only thing of his published is this record of mortality ; yet he seems to have been an artist in interments, and thought but poorly of a funeral without a sermon. The better class provided both a sermon and memorial rings for guests, with a "ticket" bidding them come and mourn. He was a regular churchgoer at St. Giles's, Cripplegate, where he lies, the death of his "pew-fellow" being among those he laments. He was a man of substance ; he speaks of having tenants in Old Jewry, where he lived before going to Moorfield, and in Coleman Street. Moreover, he was one that had had losses. He noted with humour the death of "Dr. Bird (as commonly called), to whom I lent 20s. (a desperat debtor)," and perhaps with graver feeling the death of one who died owing him £300. Doubtless he felt that respect was due to property—of a scrivener he wrote *dives et probus*, and one feels that both adjectives carry weight—but more to an orderly life. One scents disapproval in his record of the death of Bernard Ostler, a scrivener in the Old Jewry, who "died of a blow on his head with a wine pot, given by Mr. Bovey, for which he was afterwards indicted, but acquitted." Long life is good, yet has its evils ; a friend died "full of days, and of the infirmities of age." There is more emphasis when, writing of the death of an attorney's wife, Smyth says, *plena dierum et bonae famae*. One bishop dies *plenus dierum, plenus virtutum*, another *plenus dierum et numorum* ; and what as a record of



a man's whole life can equal the sadness of this, "Nathaniel Mitchell (a moneyed man)"?

The reader of this list of deaths is at first tempted to think that, unless special mortality attended the legal profession, a quarter of the people of London must have been attorneys, or scriveners, or exigents, or clerk-sitters, or serjeants-at-mace of the Poultry Compter, or "choferer of the Seales," or of the Petty Bag Office, or other officials of the law. But as Smyth was registering the deaths of his acquaintance only, and was an attorney and official, it is natural that men in the profession should fill a conspicuous place in his list. Nearly one hundred and fifty attorneys are named in all, but the greater part of these occur during the years Smyth was in practice. Afterwards only old professional friends are named, and the booksellers become more prominent in the catalogue. His entries are very brief: "Mr. Wm. Jumper, attorn. died"; "Tho. Lethbridge, attorn. Clifford's Inn, died." But sometimes a few words are added which throw light on the position of the profession. From the note, "Wm. Barwick, Mr. Houson's clerk, attorn. died," one conjectures that already attorneys had other qualified attorneys as clerks; and any excessive estimate of professional prosperity is reduced by such a record as this, "Tho. Symonds, gentl. Bishopgate, died prisoner in ye Fleet"; or this, "Barthol. Partridge, attorn. a prisoner in Wood Street Compter, buried, dying of the plague." One of the attorneys of the Mayor's Court (then limited to six in number) is stated to have been also clerk of the Vintners' Company: "good things" were even then to be found in the city by the judicious. Some attorneys, though not many, were scriveners also, and one scrivener was a clerk-sitter at the Wood Street

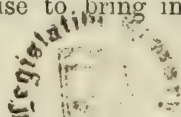


Compter. The scriveners had their houses in Cornhill and behind the Exchange. This was, indeed, a legal district. Sir John Hawkins tells us that the taverns about the Exchange became, some time after the Restoration, places for transacting almost all manner of business. There, he said, accounts were settled, conveyances executed, and there attorneys sat, as at inns in the country on market-days, to receive their clients. From Smyth's list it seems the attorneys had their offices chiefly in the Inns of Chancery, especially Clifford's Inn, or near the Guildhall, or in Wood Street, not yet monopolised by the drapers. They died in the same circumstances as other men—"in debt," "hanged himself," "of a dead palsie," "of a consumption," "of an apoplexie," "of a wound given him by thieves at Ilford." It was a client who died "of a squimcie," but an attorney who was "killed by the kicking of a stone horse." Of Mr. Cornwall, attorney of the Common Pleas, the record says "died at Reading; being dead he was so extreemly fatt as he weighed 392 lb."

A glimpse of another attorney grown fat in the troubled times is given by *The Verney Memoirs*. In 1647 Sir Ralph Verney was in exile, and his wife rode to Addington to consult his legal adviser, Mr. Robert Busby. She "was very wery with thatt little journey," but reported favourably of her reception by the attorney. "He is very kind to us about that business," she wrote.<sup>1</sup> "He hath a very fine place, and is very proude of it; truly I think he showed us every hole in the house; I am sure I was hartily weary with walking up and downe; he hath bestowed a very great deal of money upon it." Mr. Busby was the only prosperous person in the poor lady's correspondence, the editor

<sup>1</sup> *The Verney Memoirs*, second edition, i. 377.

tells us. Perhaps he had private means; at least he married the daughter of a knight and alderman of London, and stood in considerable awe of her. Lady Verney wished him to go to see her husband, but found he had no "great Maw to the journey; he is ritch and fatt," she continued, "and I dought will be afrayde of hazarding his person. . . . If ye times doth not suddenly mend, he will give over his profession and leave this Kingdom, but yet he says att ye present he hath very much practice." When Lady Verney begged Mr. Busby to go to Blois, where her husband was, she thriftily suggested that he should be paid only for the business he did, not for loss of time or expenses. It is not surprising that Mr. Busby did not go, even though Lady Verney offered to wait a week, so as to go with him, the greatest compliment, she said, that she could pay any man. Mr. Busby, the rich, fat man, found his wife and children a great tie to keep him at home; moreover, the assizes, and some other occasions of his own, detained him. It was, indeed, a prosperous time for the attorneys. One meets Mr. Busby again, in circumstances which seem quite modern, when peace reigned and the exile was back in England. A tenant-farmer had asked for, and obtained, time to pay his rent, and had then disappeared with his live stock. "Ask Mr. Busby," wrote Sir Ralph to his steward, "if I may not send hue and cry after him and the cattle. . . . Forbearing of Tenants, you see, tempts them to be Knaves." This, too, was at a time when land was going as low as twenty, or even nineteen years' purchase. The same "nearness" as to fees appears a generation later, when a settlement was to be prepared on the marriage of Sir Ralph's son. "Lawyers' clerks on these occasions," he wrote, "use to bring in their



bills as the Apothecaries doe, but the Drs. are feed by discretion and so are Lawiers . . . but in these things there is no certainty, some aske more and some less according to the quality of the Client, or their own greediness and we never use to dispute with them." A fee of five guineas was pressed "extreamly" on Sir John Coell, who, however, did not maintain the profession's reputation for greediness, and declined to take anything from one to whom he owed so much.<sup>1</sup>

It is when times are very bad or very good for the client that the lawyer finds most work, and it is not surprising that he fared well in the Civil War. When affairs of State settled down again and the country became prosperous, when there was money to invest (though a scarcity of safe investments) perhaps he did not do so well. One would expect that in a survey of the world at once so general and so minute as that made by the essayists of the Augustan age, the lawyer would be a prominent person. But in fact he cuts no great figure in *The Spectator*. The world has grown larger; new callings, greater variety in social life, the rise of politics, the greater diffusion of books, wider interests, all these have made the lawyer loom less large than he did to Elizabethan critics. Mr. Spectator notes, indeed, that there are too many lawyers to get a living, that those who have no cases affect an air of great business, and are at the coffee-houses in the legal district by eight o'clock, dressed ready to go to

<sup>1</sup> *The Verney Memoirs* make passing mention of other legal figures; of Mr. Fall, a solicitor, now attending a funeral in the family, now "tied by the leg to the Treasury Office," now having his windows broken at the glorious Revolution. Jack Ethersay, "a rude, passionate fellow," was an attorney engaged on the wrong, or anti-Verney, side at a Buckingham election. It was bitter to remember that one of the family had recommended him to some of the chief grocers, when he put in for a place in the city, as clerk of their hall.

Westminster; that some who failed as lawyers might have done well as watermen, taking others to the Courts, and that law-students were ever ready for pranks, and would themselves drive the hackney coaches they hired, with the true Jehus made to ride inside. So, too, Bonnell Thornton's *Connoisseur* observed that the utter impossibility of supporting themselves in the usual method of practising Law, Physic, or Divinity without clients, patients, or parishioners drove the labourers in those vocations into strange courses. The young solicitor "offers his assistance in the transaction of all law affairs by the public papers, and like the advertising taylor promises to work cheaper than any of his brethren." The barristers, finding no opportunity of displaying their elocution in Westminster Hall, did so in Drury Lane; and, said the author, it may be added on theatrical authority that—

"Not e'en attorneys have this rage withstood,  
But changed their pens for truncheons, ink for blood,  
And, strange reverse!—dy'd for their country's good."

A change has come over the client. He has become lazy and peaceful. True, Sir Roger introduces us to Tom Touchy, famous for taking the law of everybody, with his head full of Costs, Damages, and Ejectments. Tom Touchy is of the old, litigious breed, he has some of the ancient "generous pugnacity," but the suggestion of contempt in his appellation shows how much less formidable a person he seemed than did his mediæval ancestor. There is an echo of old charges in the suggestion that attorneys protract their clients' cases, and lawyers are still said to be fond of "talking shop" and talking it in bad English, or at least in law language. But the critic is more urbane than of old,



and the complaint of delay has shrunk into the burlesque petition of John-a-Nokes and John-a-Stiles. Those venerable stock figures protest to the short-faced gentleman that, though frequently made plaintiff or defendant, they are not of a litigious cast, have resolved to live peacefully together in future, and beg to be discharged from further service. Perhaps they were heard; at least A. B. and C. D. have displaced J. S. in the head-notes of the reports.

It was left to Goldsmith to revive the charges made against lawyers of an earlier time. The Man in Black would not have gone to law, he said, but that before he began he was assured by his advisers of success; he had been on the eve of an imaginary triumph for ten years. He was now to learn that his cause had been put off yet another term, and that money was wanting "to retain." To him the Citizen of the World declaimed against citing Coke or Ventris, since arguing from authority had been exploded in every other branch of learning, and quoted the fable of Five Animals at a Meal. The vulture gobbled up the hawk, which had devoured the yellow bird, which had consumed the serpent, which had eaten the whangan, which fed on the grasshoppers. Goldsmith himself swallowed a good deal which offered itself in the guise of Natural History. The point of the Chinaman's fable was that "the catchpole watches the man in debt, the attorney watches the catchpole, the counsellor watches the attorney, the solicitor watches the counsellor, and all find sufficient employment." Or, perhaps, the fable was an argument by premonition in favour of that fusion of the two branches of the profession which was suggested in the next century. Reflecting that the Englishman's boast is that his



property is secure, and lawyers exist only to secure our property, he concludes with the pleasing remark, "not less than one hundred thousand families live in opulence, elegance, and ease merely by securing our property." Possibly he recalled with a sigh the catchpole who watched, and perhaps shared, his bottle of madeira, while Dr. Johnson went to dispose of the *Vicar*, and reflected that he himself had "sufficient employment" and worked hard in his vocation without securing opulence, or alas! even ease.

If so, he need not have envied the attorney employed against him. If it had become a familiar truism (as Fielding said in the *Covent Garden Journal*) that great houses in the peerage had had their foundation in the law, it was in the higher branch. But all the professions seemed to Fielding but poorly paid, if one may take the opinions of his Justice Squeezum and Mrs. Staff for his own. "There's nothing to be got by the army or the law," said the justice, and discharged the prisoners from whom it was useless to look for a bribe. "You a captain . . . !" said the lady, "I should sooner have taken you for some poor attorney charged with forgery and perjury; or a travelling parson with stealing a cassock and gown." Forgery and perjury, then, were the poor attorney's foibles. At an earlier date the Church is said to have these weapons in defence of its possessions, and perhaps in neither case is the charge to be made of too general an application.

At least when about this time one meets an attorney on whom the accident of a casual meeting conferred immortality, one finds him quite an estimable person, and no nearer hanging or transportation than authors or divines, indeed not so near as that unfor-

tunate author and divine, Dr. Dodd. The attorney was another friend of Dr. Johnson's, and he flits into view in one of the most brilliant passages Boswell wrote. Mr. Oliver Edwards, who had been for some months at Pembroke College with the great novelist, met him at St. Clement's Church on Good Friday, 1778, and re-introduced himself after a break of forty-nine years in their acquaintance. For forty of these years the two men had both lived in London, and, as Johnson put it, had both been walkers in the streets, without meeting. Perhaps they had not much in common; the renewed acquaintance did not prosper greatly. But at least the Good Friday conversation deserved to be immortal, for it was then that Edwards uttered one of the best things ever said on philosophy. "You are a philosopher, Dr. Johnson," he remarked. "I have tried, too, in my time to be a philosopher; but I don't know how; cheerfulness was always breaking in." Well might Burke and Reynolds, like later critics, think this an exquisite trait of character. Its possessor was "a decent-looking elderly man in gray clothes and a wig of many curls." He had practised long as a solicitor in Chancery, he told the Doctor, he had been twice married, he was then living upon a little farm of sixty acres by Stevenage, and came to London—apparently to his office in Barnard's Inn—twice a week. He expatiated, evidently with the half-escaped Londoner's delight, on the pleasure of living in the country, of seeing the grass growing and his corn and his trees. He was anxious to get back to see if the frost had nipped his fruit trees. These sentiments did not, of course, appeal to his auditors. Dr. Johnson brought him back to the town, and with an unusual appearance of ignorance of the facts of

life, said, "From your having practised the law long, sir, I presume you must be rich." Mr. Edwards replied that he got a good deal of money, but he had a number of poor relations to whom he gave great part of it. Johnson replied that the solicitor had been rich in the most valuable sense of the word, and when the solicitor remarked that he would not die rich, naturally rejoined that it was better to live rich than to die rich. Mr. Edwards, gently regretting, as most men do, his choice of a profession, wished he had stayed longer at college, been a parson, had a good living, like some of their old friends, and lived comfortably. The good friend of the Church would not admit this view. The life of a conscientious clergyman was not easy. He himself would rather have Chancery suits on his hands than the cure of souls.

After the memorable saying on philosophy, the conversation descended to the commonplace. Mr. Edwards declared he must have his regular meals and a glass of good wine. The Doctor drank no wine, and had gone from Sunday's dinner to Tuesday's without inconvenience. Johnson ate no supper; Edwards considered supper as a turnpike through which one must pass to go to bed, though Boswell thought it was perhaps *he* who made the phrase. They discussed the propriety of leaving one's property to charity, and another point of difference arose as to age. Mr. Edwards more than once spoke of his having grown old, and the Doctor, who was his senior, was impatient at the suggestion. When he had left, Johnson admitted Boswell's suggestion that their visitor was a weak man. "Here," he said, "is a man who has passed through life without experience," but Edwards had a virtue which appealed strongly to his old acquaintance, he was ready to talk;

and in his journal the Doctor wrote that he proposed to continue the acquaintance.

Mr. Edwards was not a bookish man, for he had not read *The Rambler*, though meeting Johnson again he told the author he had heard the Doctor had written a very pretty book by that name. "I was unwilling," said the recipient of this doubtful compliment, "that he should leave the world in total darkness, and sent him a set." But Edwards could quote Thomson aptly enough, and Johnson proved that he recalled him at Pembroke by reminding him that at an alehouse, near the college gate, Edwards had quoted the famous line, "the conscious water saw its God and blushed." So that his darkness was not absolute, even without the light of *The Rambler*. The whole conversation, here imperfectly summarised, presents a picture of the attorney very different from the villain of half-penny sheets, the 'fomenter of discords, the architect of evil, drawn by critics of the profession.

It is fair to take by way of contrast the case of Mr. Lucas, who occasioned a long series of wrathful explosions in the letters of Horace Walpole. Walpole had a very low opinion, he declared, of the members of the three professions, clergy, doctors, and lawyers; and his estimate of the last was not raised by his experience in the long dispute between his nephew, Lord Orford, for whom Mr. Lucas was concerned, and the Chevalier Mozzi, who was legatee under his brother's widow's will. "We have not heard," he wrote on 21st July 1782, "a word from Lucas, who has all the immovable intrepidity of his shameless profession. . . . A lawyer, no more than a tradesman, has the least scruple of promising despatch, and breaking his word; a lie with both is a mere expletive. . . . An attorney



is so void of sensibility that he thinks honour, delicacy, or a love of peace are only symptoms of a flaw in the title. As a diamond can only be cut by a diamond, an attorney can only be foiled by an attorney. If Mozzi would come and rake the Inns of Court for another Lucas, we might succeed." This it is to be concerned with a man of sensibility. On another occasion Walpole declared Lucas so slow that he must have been the inventor of chess. If justice was blind, he said, lawyers were deaf.

Yet it would not be difficult to show that a good case could be made for the much vilified Lucas. At first Walpole declared that he and Mr. Sharpe, the Chevalier Mozzi's attorney, were in collusion; he ended by admitting that Sharpe honourably defended his client's interest, so that the conspiracy count fails. Walpole was appointed a sort of arbitrator to represent his nephew's interest, the other arbitrator being Mr. Duane, a very eminent conveyancer nominated by himself. The famous letter-writer did not much like the position, railed against attorney-conduct, and by way of contrast declared that he himself always gave the advice that was "honest and noble." He was ever suspecting something wrong in the attorneys. He did not understand, he admitted, what it was, and indeed was proud that he did *not* understand the mind of persons of that class. Nor did he like his client, or his client's friends; the whole party was "Bedlam actuated by attorneys." Yet in spite of this prejudice against his own side, his disbelief in Lord Orford's claim, and his detestation of his advisers, he found himself bound to award to Lord Orford not only all, but more than all, that had been originally claimed for him! His last complaint is of the lawyers' precipi-



tateness; they had paid over the amount agreed without waiting for his authorisation. Perhaps, if one could turn up the papers in that old arbitration, it would be found that Mr. Lucas had treated his opponent fairly, as he certainly seems to have served his client efficiently. Doubtless in his confidential conversations with Mr. Sharpe, Mr. Lucas had something to say concerning the hostile arbitrator with whom he found his client saddled.

People were recognising about that time that the position of the attorney was really important—to the individual, for he wanted a competent adviser, and “good right needs good assistance,” as Puckle said in *The Club*; and important to the nation, for, as *The Gentleman’s Magazine* had announced in 1759, “the principles of attorneys affect the happiness of mankind.” Perhaps in view of this admission the attorneys would have attained general respect but for the smallness of their fees. Six-and-eightpence is an unanswerable sneer to fling at a man. It is a mean fee, and it has long been the attorney’s. Indeed, it was once Counsel’s too, when every legal fee was a third of a sovereign, or some subdivision of a third. But the just claims of the bar had been recognised: the attorney’s fees remained unaltered in spite of the diminished value of money. So the poet seized the occasion “when Staple Inn clock stopped” :—

“The ancients’ ancient clock was stopped,  
Stopped by the hand of fate;  
The fingers stood (of course they would)  
Stuck fast at six and eight!”

The singer had grasped the essential fact: the attorney had stuck fast like the stopped clock. Six-and-eight-

pence remains the hall-mark of the calling, and it is small comfort that that sum once bore a beautiful name, whence the point of the epigram in *Wits' Recreations* "upon Anne's marriage with a Lawyer"—

"Anne is an Angel, what if so she be?  
What is an angel but a lawyer's fee?"

It must be admitted that the attorneys (by then become solicitors) altered the fee to ten shillings as soon as they had the power; and probably if, like other professional men, they could fix all their fees, they would have made theirs a quite respected profession. Prosperity commands so much regard, and implies so many virtues. As things are, popular opinion adds to any shortcomings the attorneys may possess the many faults which poverty connotes. An inconsiderate world exacts from them a decent exterior; but it does not ask or sanction any show of wealth. That, indeed, is discountenanced as a flaunting pretence, too extravagant for credence. "Never fear a lawyer in laces," said Justice Squeezum; "the lawyer that sets out in lace, always ends in rags." How rags end we know, or may learn from the sad case narrated by Mr. Saxe:—

"An attorney was taking a turn  
In shabby habiliments dressed;  
His coat it was shockingly worn  
And the rust had invested his vest.  
  
His breeches had suffered a breach,  
His linen and worsted were worse;  
He had scarce a whole crown in his hat  
And not half-a-crown in his purse."

He lamented that he had no client but grief, and naturally when his eye fell on a very deep hole in the ground, he sighed to himself "It is well." He also

remarked, the poet tells us, "Here's an opening at last!" and in less than a minute was in it. Hence it was not difficult for the jury to decide that—

" . . . as to the cause of his death  
'Twas no doubt for want of a cause."

But this flippant way of dealing with legal misdeeds is not to the world's taste. More in its humour is the gravity of reiterated reprobation with which Wordsworth's predecessor in the laurel spoke of the law.

"Take Dr. Southey from the shelf  
An LL.D., a peaceful man,"

and you find him pugnacious, even truculent, in his treatment of the profession. Lawyers are verbose, he says; you ask for justice, and they give you a nice distinction, a verbal criticism: they are "all impudence and tongue." Southey records that a barrister undertook to speak while an express went twenty miles to fetch a witness whom he wanted to call,<sup>1</sup> and quotes with approval Lord Brooke's line that the skill of the bar "helps to blind the Judge, not give him eyes." Then, having shown what the higher branch is, he says, "because Barristers are not to be suspected of ever intentionally betraying the cause which they are feed to defend, it is taken for granted that the same incorruptibility, and the same principled integrity, or gentlemanly sense of honour, which sometimes is its substitute, are to be found among all the persons who pass their miserable lives in quill-driving, day after

<sup>1</sup> This surely is a small feat compared with one which stands to the credit of the lower branch. Mr. South Norton has told us (*The History of Kent Cricket*) how in his cricketing days he was engaged in a single-wicket match, in which he broke two bats and sent a man *three miles on foot* to get another of his own, playing with a borrowed one till the messenger came back and found him still in!

day, from morning till night, at a scrivener's desk, or in an attorney's office." This is bitter reproach indeed, from a gentleman himself not unfamiliar with quill-driving, writing continually, writing poetry which he thought the finest since Milton, writing history which he expected would be remembered for centuries after his death; poetry and history now by an unkind fate as much neglected and forgotten as the deeds then being engrossed at the scrivener's desk, or the bills being copied in the attorney's office.

At even greater length were the misdeeds of the law treated in *The London Tradesman*, which was a guide, published in 1819, "by several tradesmen" to the "rationale of trade and commerce as carried on in the Metropolis of the British Empire." Perhaps a more practised hand contributed to the work; some one guilty even of quill-driving may have helped. But as the several tradesmen adopted, if they did not write, the work, here at length we have the true client's view: not the judgment of the poet, or novelist, or professed censor of life, but that of the real average client, the man who receives and pays (or at least taxes) a lawyer's bill, the views of a man of business, one of the solid, serious persons who have made us what we are. They deplore, these several authors, the increasing number of lawyers who "fan the flame of discord"—164 applied to be admitted to the King's Bench in Trinity Term, 1819—and the "litigious" disposition shown by great numbers of men, "particularly when they find themselves closely pushed for payment." The lawyers, they declare, seek to "embroil" the injured man still more, to make "a good client" of him, a title noxious to the tradesman. The authors further lament that every

man thinks his own attorney honest. Ironically they wish such a silly client happiness, until he discovers his mistake. A very great fault it is, we are told, for a tradesman to designate one of these persons "*his* attorney," or to say "I shall ask *my* lawyer," for as sure as he does so the harpy becomes a licensed buccaneer. To avoid this, the tradesman is recommended to consult two or three lawyers alternately: they then keep each other in check. The lawyers, among their other evil doings, try to prevent arbitration—even "a reference to two tradesmen." Moreover, their charges in conveyancing matters sometimes depended "wholly upon the *honour* of the attorney (which is a solecism)." But the tradesman was not to suppose that he should never go to law. A fifth of the book is devoted to showing him how to do so, to explaining the nature of the Courts to which he may have recourse, and the numerous occasions in which he ought not to listen for a moment to a debtor's request for time, but sue at once for his due.

Perhaps *The London Tradesman's* lessons were not learnt. When Mr. Kenny Meadows in 1840 took to drawing the *Heads of the People, or Portraits of the English*, it was remarked by Douglas Jerrold that no one spoke of "*my* Pawnbroker," though men would vaunt of "*my* wine merchant," "*my* bookmaker," or even "*my* attorney." Mr. Meadows's collaborators who supplied the text of his book, had no great love for the law. Indeed, the men of letters did not for many years waste much love for the attorney, perhaps because since Goldsmith's friend, Hifferran, invented the blessed word impecuniosity, they generally met him only when he was concerned against them and for the ruthless London tradesman. Times have changed.



The novelist-princes, who dash from their Mayfair homes to their country seats, in their own redolent and expensive cars, must be "good" clients, must beget in their professional advisers, and may possibly reciprocate, respect. But in 1840 the Grub Street tradition was not quite dead. So Mr. Laman Blanchard wrote severely of the bar, and as critically as he dared, of the judges. Mr. Leman Rede, who was called in to do the Solicitor, quoted Elia's dictum, "lawyers were children once," but doubted it. "One might imagine Lyndhurst knuckling down at marbles," he said, "but your Attorney, your issuer of writs, and drawer of cognovits, your mortgage maker! He was never a boy." And as poets were born, not made, might not lawyers be made, not born? "Is there no litigatory spirit that takes a strange delight in concocting these animals, and popping them down in Fig Tree Court, or Harcourt Buildings, fresh from the mint of mischief, 'seeking whom they may devour'?" Condescending to more detailed examination of the race, he divides them into (1) Japan solicitors, who live in a region of Japan boxes, would scorn to issue a writ, and should have their names printed in the Law List in letters of gold; (2) agency solicitors; (3) Insolvent Debtors Courts or I.D.C. attorneys; (4) criminal solicitors. There are also sub-divisions or variants; the money-lending solicitor, *e.g.* Ralph Nickleby (though Dickens had expressly said Mr. Nickleby was not an attorney), theatrical attorneys, and the *genus* pettifogger, *alias* sharp practitioner, which had fallen somewhat into decay.

These being the varieties, Mr. Rede proceeded, after the manner of other naturalists, he said, to sum up the common characteristics:—

“A solicitor is seldom very fat . . . A solicitor is seldom very tall . . . a solicitor has a keen, enquiring look—uneasy, not to say, suspicious; he is often clever, never great; generally acute, never profound; he deals in details, and never cares for or comprehends principles; he sees a point of law only as it affects the case before him; he asks many questions, and answers few. He is, in nine cases out of ten, a Tory. He cares little for literature; but, if rich, affects pictures, which he regards as good investments of capital. He is well read in the classics, but seldom really a scholar. Though he claims to himself the name of Lawyer, there are not many amid the class who deserve that title. When he doubts (and when does he not doubt?) he sends the case to counsel. He buys Term Reports, but doesn't read them, and his shelves are loaded with learned legal volumes, doomed never to be opened. From being continually consulted and appealed to, he attains a certain look of self-satisfaction, a perfect reliance on his own acumen. He laughs little, but has a 'stock' smile, that suits many, if not all occasions . . . He sometimes speaks at public meetings, but never very successfully; he sometimes subscribes to public charities—but never very largely. When he visits the theatre it is to see a comedy . . . I will not say that the duties of his calling harden his heart, but assuredly they have a tendency to deaden it. Much of his time is necessarily spent in making people uncomfortable; some of it is happily devoted to righting the wronged and resisting the oppressor. I would not willingly have my son a lawyer; though I have known many intelligent, honourable, and generous men in that profession; and, in fact, extraordinary as it may appear, once found 'a friend' in a Solicitor.”

The last sentence, which must to its author have seemed a quaint paradox, is the measure of professional unpopularity : "extraordinary as it may seem." Whatever figure he may cut, seen obliquely and in sidelights, the lawyer painted at length is no favourite figure. This is not surprising. "Law," we read in Owen Felltham's *Resolves*, "is the bridle of the human beast, whereby he is held from starting and from shambling in his way. It is the hedge on either side of the road, which hinders him from breaking into other men's property." The man who holds the bridle is not likely to be loved by the beast; the hedge-mender gets no thanks for shutting off meadows which seem so alluring. The world's verdict, then, is against the race of lawyers.

But of what profession could not sayings as hard be found? Is not "apothecary" a term of abuse as stinging and contemptuous as "attorney"? Are not the doctors always quacks to their critics, persons who "thrust drugs of which they know little into bodies of which they know less"? Their patients quote with glee the verse which tells how King Asa, when his disease was great, sought not the Lord but physicians, and soon slept with his fathers. As to the clergy, literature is full of complaints, unjust doubtless, of their greed, their laziness, their hypocrisy. Mr. Dowling, even when the flaws in his integrity are admitted, is a better fellow than Parson Trulliber. Or one may take the case of the stockbrokers, whose profession has the advantage of being relatively modern. No accumulation of ancient grievances weighs upon it; unlike the law, it has no heritage of dislike. Yet in its career of little more than two hundred years it has incurred censures such as the Court of Chancery

itself scarcely rivals. Dr. Johnson's splenetic definition of a stockbroker, "a low wretch who gets his money by buying and selling shares in the funds" is not more severe than the judgments of more responsible critics. Poets, moralists, satirists, and statesmen combined to denounce Change Alley. Sir Robert Walpole said every one was aware how the administration of this country had been distressed by the stockbrokers. The House of Commons resolved that nothing could tend more to the public credit than to prevent the infamous practice of stock-jobbing. The mania of speculation has been thought more detrimental to the country than the mania of litigation, and perhaps it is the later mania which has driven out the earlier one. If so, the attorney has no cause to love the broker. Something of the spirit of litigation is found on the Stock Exchange, brain pitted against brain, nerve against nerve, while the gambler's prize is bigger than the litigant's. The prize, too, is sooner won, for settling day comes twice a month, while the justices in eyre arrive scarce once a quarter. It is not surprising that the new John Bull prefers Capel Court to Chancery Lane; but it is possible that the eastward movement is not for his well-being.

The remuneration of the brokers was long, like the lawyers', regulated by law. The law attempted also to regulate their business. For a hundred years after the passing of Barnard's Act the broker was practically an outlaw. Defoe called stock-jobbing a scandalous trade, knavish in its private practice and treason in its public. A little book, *Every Man his own Broker*, explaining "the mystery and iniquity of Stock-Jobbing," published in 1761, had reached a ninth edition in 1782. Mr. Mortimer, the author who met with so



much public approbation, was determined to expose "the ignominious practices of the dishonest part of the fraternity who subsisted entirely on the knavish tricks carried on . . . in the Alley," and the "fatal effects of stock-jobbing." He painted in "true and lively colours," he declared, "the scenes of chicanery, duplicity, and fraud, exhibited at Jonathan's Coffee-house," and endeavoured to free his readers from the "medley of barbers, bakers, butchers, shoemakers, plaisterers, and taylors whom the Mammon of unrighteousness has transformed into stock-jobbers."

All this is pretty well for a new vocation—one which, whatever moralists may say of gambling, has no lack of popular regard. The professions are most exposed to criticism, but probably there is no calling of which severe reprehensions could not be found. The lawyer sensitive to public opinion may thus console himself that he is in a large, if not a good, company. It may be a further balm to his wound if he recalls that the individual attorney seen in these sidelights is generally not a bad fellow. Like the poor, the lawyer in the lump is bad; but the instance, more closely studied, proves ever to be a brilliant exception. The Hon. Mrs. Osborne thought all lawyers rogues, but had nothing to say against Mr. Theed, her own attorney. Mr. Busby evidently won Lady Verney's regard, if only by his prosperity, and deserved it by his kindness to a client fallen on evil times. Dr. Johnson's friend cuts a pleasant figure in Boswell. Mr. Leman Rede once found a friend in a solicitor. From the Radical man at odds with the law one would expect harsh criticism. But Samuel Bamford<sup>1</sup> had nothing worse to say than that at his trial his attorney,

<sup>1</sup> *Passages in the Life of a Radical.*



Mr. Pearson, gave more of his attention to the principal defendant, Orator Hunt. And—what would Cobbett have said?—he had earned a few shillings as copying clerk in Mr. Pearson's office. The attorneys can have had no more ferocious critic than Mortimer Collins. "There is an odd thing about attorneys," he said, "they never know any law. . . . The blunders they make, their ignorance of elementary law, their terror of acting without the advice of counsel (who know little more than they) would be laughable if it were not harmful."<sup>1</sup> Yet the attorney who had to apply to him for payment of a debt turned out to be quite a pleasant fellow. He wrote at first on blue notepaper. The author's secretary, we are told,<sup>2</sup> in sending the money, said it was unnecessary to have frightened her with such unpleasant blue-looking paper, and made disparaging remarks on the conduct of attorneys generally. To this she received a very courteous reply *on white paper*. Collins was so pleased that he sent a copy of his new book to the lawyer with verses inscribed:—

"The writer wandering here and there  
In easy devious journeys,  
Has very seldom had to swear . . .  
Except at the attorneys.

But since your letter came to me,  
So courteous, pleasant, witty,  
He thinks a *gentleman* may be  
A lawyer in the City."

Borrow thought highly of the gentleman to whom he was articulated, and declared Mr. Simpson the first solicitor in East Anglia, indeed, the prince of all English solicitors. Praise scarcely lower was given to

<sup>1</sup> *Thoughts in My Garden*, i. 283.

<sup>2</sup> *Mortimer Collins: His Letters and Friendships*, i. 105.

Mr. Atherton of Calne, to whom "Barry Cornwall" was pupil. He was a man of rare but unobtrusive intellect, Mr. Procter wrote. "It was not long before I discovered that he had qualities which were superior to my own. If he had less of ornament, he had quite as much intellect and as much delicacy as I had. Then he was kind *and irresistibly honest.*"

"Doth not this make amends?" Yet, not to end upon too high a note, let the opinion of another critic be added, though in strictness it applies to the writer-bodies north of the Tweed. "What are the lawyer tribe in Glasgow like?" was asked. The answer is full of universal wisdom: "Pretty much as other men. Some are upright, some have an intermittent probity, others make money by company-promoting, and others, strange to say, seem to make a good living by borrowing each other's Post Office Directory." That, doubtless, is the conclusion of the whole matter: pretty much as other men.

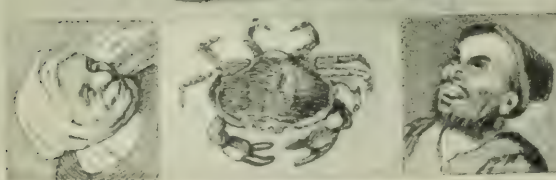
## NO LAWYERS!

[*A Speech delivered in the British Congress (late House of Commons) A.D. 2009.*]

SIR,—I rise to move the resolution which stands in my name.

Let me begin by recalling a notable incident in our earlier history. "The first thing we do," said the Radical Reformer, "let's kill all the lawyers!" "Nay," said the Right Honourable gentleman from North Kent,<sup>1</sup> "that I mean to do." The speech, as reported, proceeds to deal with parchments and so forth—clearly the work of the reporter, himself under suspicion of being a *noverint*, and so familiar with seals and sheepskins. The true story recommences where the Clerk of Chatham, who could make obligations and write court-hand, is very properly hanged with his pen and inkhorn about his neck. But there are worse things in the law than deeds, and the philosophers knew it ere the politicians. These things cannot be concealed from the philosophical eye. The sages have long realised that in the world as it ought, and is now, to be, lawyers will have no place. Sir, the reform has been too long delayed. We are in the tenth year of the new era; it is now nine years since the inauguration of universal brotherhood and yet

<sup>1</sup> Mr. Cade was (posthumously) elected to the Privy Council by resolution of Congress, and included in the Labour Day Honours List, A.D. 2001.



*Burning Home*





lawyers still live ! They have increased, are increasing, and ought to be extinguished. There was never such an attorney-ridden land as England, if we except the sister republic in the near west. I do not mean to touch on the Near Western question. I will only say that Ireland is about to grapple, and, Sir, I rejoice to think that since she has been free she has always been about to grapple, with this and every other question.

Sir, I said the philosophers are on our side. I will prove it. I pass over Aristotle (cheers) ; Plato is good enough for me. That great philosopher pointed out that a lawyer, he who from his youth upwards has been "knocking about in Courts and such like places," is a slave, that he is not free to follow his theme where he will. He cannot expatiate at will, as we in this House, Sir, since the glorious abolition of the Standing Orders and happy adoption of the Continuous Session, can do. "There is his adversary standing over him enforcing his rights ; the affidavit, which in their phraseology is termed the brief, is recited ; and from this he must not deviate. He is a servant and is disputing about a fellow servant, before his master, who is seated and has the cause in his hands ; the trial is never about some indifferent matter, but always concerns himself ; and often the race is for his life. The consequence has been, that he has become keen and shrewd, he has learnt how to flatter his master in word, and indulge him in deed ; but his soul is small and unrighteous. His slavish condition has deprived him of growth and uprightness and independence ; dangers and fears which were too much for his truth and honesty came upon him in early years, when the tenderness of youth

was unequal to them, and he has been driven into crooked ways; from the first he has practised deception and retaliation, and has become stunted and warped. And so he has passed out of youth into manhood, having no soundness in him; and is now, as he thinks, a master in wisdom. Such is the lawyer."

If the lawyer is such, why do we suffer him to live "in England's fair and pleasant land"? But, Sir, the case does not rest on Plato alone. I pass to that later picture of the world as it should be—the *Utopia* of Sir Thomas More. He was himself a lawyer; he was indeed Lord Chancellor; but as he knew so he spoke the truth. "Furthermore," he said, speaking of that happy land, "they utterlie exclude and banish all attorneys, proctors, and sergeants at law, which craftily handle matters and subtly dispute of the laws. For they think it most meet that every man should plead his own matter and tell the same tale before the judge that he could tell to his man of law. So shall there be less circumstance of words and the truth shall sooner come to light, while the judge with a discreet judgment doth weigh the words of him whom no lawyer hath instructed with deceit, and while he helps and bears out the simple wits against the false and malicious circumventions of crafty children."

Sir, there follows a sentence which at first sight is surprising; "in *Utopia*," More said, "every man is a cunning lawyer." But his meaning is that no professional lawyer is needed to interpret good laws. And the ingrained protestantism of the English people will welcome here the same right of private judgment in legal, as it long ago established in theological, matters. The private interpretation of statutes in the old, evil,

individualist days led many citizens inside the gaols, now of course gone with the Bastille and Property, and individual Liberty, and . . . other things. But I pass on.

Not to weary you with too many instances I quote, Sir, only one more authority, that of a civil servant of high position, a moralist not yet utterly outmoded, an historian not entirely eclipsed even by the brilliant works of Perfected Historians, Limited—I mean Sir Arthur Helps. “In law,” he said, “what a loss is there; of time, of heart, of love, of leisure! . . . I do not know a sadder portion of a man’s existence, one more likely to be full of impatient sorrow than that which he spends in waiting at the offices of lawyers.” He called, though he expected to call in vain, for a statesman to protect the people from lawyers. Not he only called; the people were with him, Companions in his Solitude. Not in vain did he call, though long unanswered, not in vain. The hour has come, Sir, the Statesman is here. . . . I deal with that interruption at once, Sir. I repel it. I have searched the records and I can *not* find that Sir Arthur ever lost a case. The honourable member says that perhaps his case was so bad he had to settle. (*Confusion, amid which several members were removed to the cells by the Todd Patent Order Restorer, worked from the Speaker’s chair, and their week’s coupons*<sup>1</sup> *cancelled.*)

Sir, I proceed. I turn for the moment from the philosophers and moralists (Hear, hear) and I find the common sense of the people of England led ever to the same conclusion. Many and constant were the efforts to rid the land of this pest. From time

<sup>1</sup> Presumably the tickets which had been substituted for metal coinage, A.D. 2003.

to time they were forbidden to sit in Parliament. The British Solomon, on the convention of a Parliament, urged upon the people to beware of wrangling lawyers and another sort of peevish people. The first attempt to reduce them was by primitive means, for we read<sup>1</sup> that the attorneys were *menaced and beaten* in every shire, hundred, and wapentake. True, the forces of a corrupt individualism resented this, and even had the impertinence to petition Parliament against the practice, and to brand as "conspirators" the first enlightened pioneers of a movement now reaching its consummation. But the protest was in vain. In 1292, and 1402, and again in 1616, the judges were directed to reduce in each county to a proper number the practitioners of the courts. In 1455 Norfolk and Suffolk obtained a statute reducing the attorneys to six in each county, with two extra in Norwich. Whether that noble act of Parliament was enforced I do not know, but in the county of Dorset the people, without troubling Parliament, effected what Norfolk sought. I read,<sup>2</sup> Sir, that, at Lyme, Thomas Densloe and Richard Ellyot and all other attorneys practising in the Hustings Court of Lyme, except three, were removed by the mayor and his brethren from their attorneyship. And there, at least, the order was obeyed, and Thomas Densloe turned schoolmaster. Sir, I attribute the quiet, pastoral beauty of that happy commune to this enlightened action. And in another beautiful spot, the Isle of Wight, the people had men of light and leading; they drove the lawyers away, and with their

<sup>1</sup> *Rot. Parl.*, i. 289. (A.D. 1314.)

<sup>2</sup> *Social History of the Southern Counties* (1856), p. 148.

own candles lit such a light as has never been put out. I read :<sup>1</sup>—

“ A London lawyer came, a sculking spy,  
Pride in his heart and profit in his eye :

. . . . .

The Lawman sigh'd to break the heaven of rest,  
And pour his poison thro' the artless breast,  
A practice common with this dreadful pest.  
To this foul end he sought for Newport town  
And by the dear Medina sat him down.”

He was, we learn from the same source, a whelp of Empson's or of Dudley's breed ; so that presumably he was a member of the bar. But, Sir, I draw no pettifogging distinction between the two branches. I do not quibble with technicalities ; nor did the good folk of Newport. They fastened candles to him, Sir—that was why he sat by the Medina—they lit them, and they ran him out of the Island ! Can we do less than follow such a noble example ? And for lawyers there will be no Pied Piper ; and if there were I know of no mountain large enough to hold them.

Nor was England alone in her efforts to be rid of these people. When the spirit of the French nation rose to its inspired effort, when “ a glorious people vibrated again the lightning of the nations,” as Shelley says, she with sure instinct abolished lawyers. In 1791 she decreed that “ no *ci-devant* attorney, clerk, bailiff, lawyer, or proctor ” should represent citizens at the *bureau de paix*, though, of course, other citizens were allowed to do so, as proxies for the litigants, if they had power to compromise. In 1793 the office of

<sup>1</sup> *The Burning Shame; or Punishment for Bad Lawyers.* A custom peculiar to the Borough of Newport in the Isle of Wight. A poem. By T. Nicholls.



*avoué* was abolished; so were notaries, law schools, and all the apparatus and instruments of oppression. For nearly seven years, Sir, France enjoyed that glorious liberty. It was not even the republic alone which acted thus; the less obscurantist and ignorant of tyrants did the same, and indeed I know of no race more hostile to the lawyer in private practice than the bureaucrat. Napoleon proposed that the lawyer should have no fees if he did not win the case. Frederick the Great decreed the extirpation—"painless were it possible," as the historian says—"of the pettifogger species; indeed of the attorney species altogether: 'seek other employments; disappear all of you from these precincts, under penalty.'" The advocates also, though allowed to exist, were to be limited in number, the sound, or at least, soundest, being retained and the rule being first applied to the most litigious province. The Prince of Hesse Darmstadt in 1819 compelled all lawyers to enter his army. That, Sir, I applaud in every way. He stopped the practice of the law, which is good, and, as he certainly did not succeed in making soldiers of the men of law, he made the art of war more difficult, which is good, too. Peter the Great had only two lawyers in his dominions and said he meant to kill one of them as soon as he returned to Russia: I hope that he was, and that we shall be, better than his word. Ferdinando, King of Spain, when he sent Pedrarias to govern the Western Islands (No, Sir, I do *not* know who Pedrarias was) forbade him to take any lawyer or advocate along with him; his reason was that the seed of suits should not be sown, where there were none before. For, Sir, as Plato says, *ubi causidici multae, ibi lites multae*. It was for that reason that the introduction of lawyers into the New

World was constantly forbidden. "No bachelor comes here," wrote Vasco Numez in 1513, "who is not a devil, and who does not lead the life of a devil." It may surprise some to learn that the legal habit of "devilling" is so ancient. Vasco supplicated the King to "give orders under a great penalty, that no bachelor of law or anything else, except medicine, should be allowed to come to these parts." "There was something," said Sir Arthur Helps, "in this world so torn by differences of opinion, wherein the Spanish conquerors and colonists universally agreed. Biscayan, Estremaduran, Andalucian, Castilian—men who had various points of difference, and numberless provincial jealousies—concurred in one request. As soon as any colony was in the least degree established in the New World, the colonists almost in their first communication with their sovereign, were sure to entreat him to prohibit lawyers from coming out to them."<sup>1</sup> So, Sir, in 1516 lawyers were forbidden to go to Cuba, in 1523 they were excluded from Mexico, in 1529 they were excluded from Peru, in 1538 the attorney who had arrived in Quito was forbidden to practise, in 1541 lawyers were prohibited in La Plata. It is true that in 1527 they were allowed to go to New Spain; and what was the consequence? Why, Sir, "the malice of men and the introduction of so many lawyers and scriveners" threw out of work the arbitrators to whom, in the absence of lawyers and judges, the colonists had been compelled to go. That is detestable. I have been an arbitrator myself, and I know. And this was in spite of the lawyers being sworn not to act for clients unless they had right on their side, and further not to ask for the adjournment of any case. It is true

<sup>1</sup> Helps, *The Spanish Conquest of America*, iii. 12.

that the colonists sometimes asked also that doctors should not be allowed to settle among them, and were as hostile to converts and Jews as to lawyers. But, Sir, one cannot too highly admire the wisdom of the Court of Spain in preserving its people from what Sir Arthur Helps calls the "cruel frivolities, the fatal forms, the needless precautions which soon become snares, the subtlety applied to verbiage which no skill can securely arrange and no dialectics can disentangle, and all the vast delay which belongs to great law-suits in highly civilised communities." I attribute the settled and orderly life of South America, and the delightful absence of litigation, to these early circumspect decisions.

Sir, the subtlety applied to verbiage, the ingenuity of misunderstanding which lawyers exhibit, has ever troubled the world. It will trouble us even in this golden age, if we let lawyers live. We should re-enact a statute of James I. of Scotland, with the striking title "that none interpret the King's statutes." The King wisely forbade any one to "interpret" his acts otherwise than "to the intent and effect that they were made for, and as the maker of them understood." That is common sense. Well, Sir, if the honourable member who interrupts does not interpret the words in the same sense, that shows how necessary the statute is.

I have spent some pleasant hours recently in re-reading the anticipations, the forecasts, written a century ago, by the prophets who foresaw this glorious age: Morris, Butler, Bellamy, Wells, Richter. They predicted truly many of the achievements of our time; the abolition of chimneys, the municipal music supplied by telephone to every bedroom, the publicity of our private life, the organisation by Government of

free entertainments for the people—now indeed our principal task—the establishment of the State as sole shopkeeper, and, not least, the great personal beauty we all possess. But on this point of the toleration of lawyers they differed. Morris predicted there would be no lawyers, since, property being abolished, there would be nothing for law to operate upon; and as for criminal law, the remorse of the wrongdoer would be punishment enough for any little homicide or occasional error of that kind. I hope we shall come to that in time, when the lawyers have been abolished, and other public enemies, such as (to name no more) the present Opposition—(cheers). Mr. Wells would have allowed lawyers (so little did even the best anticipations of that time equal the bright realities of ours), but he would have made them different from any lawyers the world has seen, by requiring them to belong to the Samurai, who were to be neither dull nor base, neither fat nor thin nor flabby, were to buy and read a new book once a month, and to go, penniless and alone, for a week's picnic once a year. Richter would have permitted lawyers, but only as State officials, not, therefore, inclined to bestir themselves on behalf of their clients. In Erewhon also lawyers existed, and even defended a wretch guilty of anti-eugenics. Mr. Bellamy with surer vision abolished them, their schools and the whole science of law. "We do without lawyers, certainly," said his exponent. . . . "It would not seem reasonable to us in a case where the only interest of the nation is to find out the truth, that persons should take part in the proceedings who had an acknowledged motive to colour it." An honourable member says "How about the prisoner? did he not want to colour it?" I reply, No, sir, *he* only wanted to be white-

washed. The accused, sir, in Mr. Bellamy's Utopia (postal address, Boston, U.S.A.) generally pleaded guilty, and a man convicted after pleading not guilty got double sentence. But if a man was so daring as to deny his guilt in spite of this, the judge appointed two other judges to state the opposing sides of the case; and unless both agreed on a conviction the prisoner was tried again. A good many judges were wanted, therefore; and more because every complaint against an officer of the Industrial Army, to which every one belonged with them as with us, was taken to a judge. So that, Sir, if we frame ourselves on this model a good deal of patronage will be in the hands of the Government—in itself a desirable thing. I see the lawyers in the House look cheerful. Let me explain that they would not be eligible for the posts; but that is unimportant, as if my motion is carried none of them will survive.

It might perhaps be thought that lawyers are unkindly treated in being abolished now when the reign of universal felicity begins. I hope no weak sentimentality of that sort will deter us from our duty. "The men of the New Republic," as Mr. Wells said with remarkable foresight, "the men of the New Republic"—that is us, Sir—"will not be squeamish, either in facing or inflicting death. . . . They will have an ideal that will make killing worth the while." Sir, it is worth while to kill the lawyers; I call on them not to be squeamish about being abolished. Let them realise that we are doing a kindly act, that they will have a joyful release from a state of suffering. I believe they will welcome the lethal chamber, will impatiently anticipate their euthanasia. How should they be happy when other men are? The



client's felicity is the lawyer's undoing. And there is another reason. It was said long ago, in this House, that an attorney is a person who does nothing for 6s. 8d. and something for 13s. 4d. Can you imagine a more miserable calling? can you imagine such miserable fees? From privates up, we are all officers now, all officers in the great Industrial Army, or elsewhere, and we should scorn such pitiful remuneration. But, Sir, the lawyer has not obtained even that. A brigade of taxing-masters exists to prevent him. State officials exist—high officials, expensive officials, £1500-a-year-officials—for the purpose!

“They, with the gold to give, doled him out silver,  
So much was theirs who so little allowed.”

So the beggarly charges must be lessened; the 6s. 8d. must be disallowed, as not earned, and the 13s. 4d. reduced to 6s. 8d.; else what were taxing-masters for? Sir, I cannot contemplate without compunction so much wickedness or so much poverty. The tender hearts of the ladies and gentlemen who hear me will not permit the continuance of either. I do not forget that next year my right honourable friend the First Lady of the Treasury will abolish the remaining relics of property. I recognise that with private property the use of money will go too, that one-third of a sovereign will be as good, or as useless, as two-thirds. But, Sir, did the lawyer live, this would make life only more painful for him. He has been so enslaved to money that he is not fit to enter our promised land. Mercy and Justice alike call on us to act. Let us act, then! let us enter the Socialist Paradise unstained by such companions. Kings are gone, the Churches are gone, Property is nearly gone, Liberty, so called, is

going; let Law go, too. And if any lawyer feels annoyance at his removal, it will solace his last minutes, it will assuage his bitterest pang, it will reconcile him to his fate, to remember that the taxing-masters are to go at the same time. So comforted, let them now commence their last Long Vacation!

Sir, I beg to move: *That all Lawyers be abolished forthwith, and that the State Lethal Chambers be reserved for their use for one calendar month from the date of this decree.*

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